ADMINISTRATIVE TRIBUNAL OF THE INTERNATIONAL MONETARY FUND

JUDGMENT No. 2019-1

Mr. "LL", Applicant v. International Monetary Fund, Respondent

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INTRODUCTION

1. On April 25-26 and November 7-8, 2018, and February 26, 2019, the Administrative Tribunal of the International Monetary Fund, composed for this case, pursuant to Article VII, Section 4 of the Tribunal's Statute, of Judge Catherine M. O'Regan, President, and Judges Jan Paulsson and Edith Brown Weiss, met to adjudge the Application brought against the International Monetary Fund by Mr. "LL", a former staff member of the Fund. Applicant, using the form provided at Annex B of the Tribunal's Rules of Procedure, had earlier designated Mr. Peter C. Hansen, Law Offices of Peter C. Hansen, LLC, as his "duly authorized representative and counsel" and stated in his Revised Application that he "continues to be assisted by counsel." Nonetheless, Applicant signed and submitted the Revised Application and Reply himself; each pleading was accompanied by a supporting Letter from his designated counsel. Mr. Hansen appeared on behalf of Applicant in the oral proceedings. Respondent was represented on the written pleadings by Ms. Diana Benoit and Ms. Melissa Su Thomas, both Senior Counsels in the IMF Legal Department. Ms. Benoit, along with Mr. Brian Patterson, Assistant General Counsel in the IMF Legal Department, appeared on behalf of Respondent in the oral proceedings.

2. Applicant initially filed an Application with the Administrative Tribunal on December 28, 2015. On June 28, 2016, following Respondent's submission of a Motion for Summary Dismissal, the Tribunal decided to suspend the pleadings to allow for the exhaustion of various related claims through the channels of administrative review, i.e., the Grievance Committee and the Administration Committee of the Staff Retirement Plan (SRP or Plan). *Mr. "LL", Applicant v. International Monetary Fund, Respondent (Suspension of the Pleadings and Denial of Provisional Relief)*, IMFAT Order No. 2016-1 (June 28, 2016). On July 24, 2017, following notification that the administrative review processes had been exhausted, the Tribunal ordered Applicant to file a Revised Application that would take account of those developments. *Mr. "LL", Applicant v. International Monetary Fund, Respondent (Recommencement of the Proceedings)*, IMFAT Order No. 2017-1 (July 24, 2017). The Revised Application is the subject of this Judgment.

3. In the Revised Application, Applicant challenges the following decisions of the SRP Administration Committee: (i) to reconsider and reverse its 2011 decision denying Applicant a disability pension, and to grant that disability pension retroactive to and in lieu of the early retirement pension on which Applicant had retired in 2012; and (ii) to pay Applicant a "coordinated" disability pension and workers' compensation annuity, which is (a) capped at the amount payable to him as a workers' compensation annuity, (b) financed in part by the SRP, and (c) reduced by the commutation payment Applicant had taken on his early retirement pension.

Applicant argues that he is entitled to both the early retirement pension, reflecting deferred past income, and the workers' compensation annuity, reflecting lost future earnings. He also opposes the partial financing of the annuity by the SRP, contending that workers' compensation benefits to which he is entitled under GAO No. 20 should be financed exclusively by the IMF's administrative budget.

4. Applicant additionally alleges that the Fund wrongfully: (i) required repayment of the lump-sum benefit he had been granted from the Separation Benefits Fund (SBF) at the time of his separation for medical reasons pursuant to GAO No. 16; (ii) breached a "duty of care" to take preventative measures to ensure his health and safety; (iii) failed to provide compensation for injury to Applicant's spouse; (iv) failed to provide compensation for lost personal effects; (v) failed to provide Applicant with "special sick leave" for workers' compensation related absence; (vi) failed to pay Applicant interest on retroactive benefit payments; (vii) failed to compensate Applicant for alleged tax consequences of the Fund's determination of his benefits; and (viii) failed to provide compensation for procedural irregularities, delays and failures to address confusion in the Fund's laws on disability.

5. Applicant seeks as relief: (a) reinstatement of his early retirement pension; (b) reinstatement of his separate workers' compensation annuity; (c) that the workers' compensation annuity be financed solely by the IMF's administrative budget; (d) reimbursement of Applicant's early retirement pension commutation payment to the extent that it has been deducted from his "coordinated" annuity payments; (e) reimbursement of Applicant's repayment of the lump-sum SBF (i.e., medical separation) payment; (f) 3 years' gross salary as compensation for pain and suffering consequent to alleged breaches of the Fund's "duty of care" to ensure Applicant's health and safety; (g) 3 years' gross salary as compensation for injury to Applicant's spouse; (h) compensation for lost personal effects; (i) reimbursement for the maximum 24 months of "special sick leave" in connection with his work-related injury; (j) compensation for interest lost as a consequence of retroactive payments to him; (k) compensation for alleged tax consequences of the Fund's determination of payments due to Applicant stemming from his work-related injury; (l) 6 months' gross salary, plus all legal fees incurred since the commencement of proceedings in any forum, regardless of whether Applicant prevails on the merits of the Application, as compensation for procedural irregularities, delays, and failure to address confusion in the Fund's disability laws and for consequent mental and financial stress; and, in any event, (m) legal fees and costs, which the Tribunal may award, in accordance with Article XIV, Section 4 of the Statute, if it concludes that the Application is well-founded in whole or in part.

6. Respondent, for its part, maintains that the Tribunal should sustain the various decisions of the SRP Administration Committee and of Fund Management (accepting the recommendations of the Grievance Committee). The Fund asserts that Applicant's "coordinated" disability pension and workers' compensation annuity, retroactive to his early retirement date, represents the maximum benefit available under Fund law for total and permanent disability stemming from a work-related injury. The Fund additionally submits that the various payments to Applicant have placed him in the same position he would have been in had the finding of total and permanent disability been made before his retirement rather than after. It further urges the Tribunal to reject all of Applicant's additional claims for relief as without merit.

PROCEDURE

7. On September 14, 2017, Applicant filed a Revised Application with the Administrative Tribunal, which was supplemented on September 29, 2017. The Revised Application, as supplemented, was transmitted to Respondent on October 2, 2017. On October 16, 2017, pursuant to Rule IV, para. (f), the Registrar circulated within the Fund a notice summarizing the issues raised in the Revised Application.

8. On November 16, 2017, Respondent filed its Answer to the Revised Application. The transmittal of the Answer was deferred while the Tribunal considered the possibility of taking a decision on Applicant's requests for production of documents. Having reviewed the Applicant's requests and the Fund's responses, the Tribunal decided that it would not be appropriate to take a decision on the document requests at that juncture. Accordingly, on December 11, 2017, the Answer was transmitted to Applicant for his Reply.

9. On January 11, 2018, Applicant submitted his Reply. The Fund's Rejoinder was filed on February 20, 2018. On May 3, 2018, following oral proceedings in the case, Applicant submitted a Supplementary Request for Costs, to which the Fund responded on May 11, 2018.

A. Applicant's requests for production of documents

10. Pursuant to Article X of the Statute and Rule XVII of the Rules of Procedure, in his Revised Application, Applicant requested production of the following documents:

1. Details of the Fund's program for the insurance of spouses as set out in the Resident Representative Handbook.

2. The Marsh Insurance claim stating the replacement value of Applicant's office effects lost in the circumstances of this case.

3. All Fund documentation not strictly covered by attorney-client privilege relating to: (a) Applicant's condition, benefits, pension and worker's compensation; and (b) the Fund's interpretation or understanding of its rules on worker's compensation, and on pension vesting.

On March 19, 2018, having considered the views of the parties and the record of the case, the Tribunal notified the parties that it had denied Applicant's requests for production of documents. These decisions are elaborated below.

(1) Request No. 1

11. Applicant requested "[d]etails of the Fund's program for the insurance of spouses as set out in the Resident Representative Handbook." In response, the Fund annexed to its Answer a portion of the Resident Representative Handbook and also referred to the same page of that Handbook as Applicant had reproduced in the Revised Application. Additionally, the Fund has provided GAO No. 12 (Travel Insurance), Rev. 8 (May 15, 2006).

12. The parties dispute whether Applicant is entitled to compensation for alleged injury to his spouse.[1] Applicant has not, however, provided a basis for the Tribunal to conclude that the Fund has failed to produce documents in its possession responsive to Request No. 1. In cases in which the Fund asserts that it has no documents responsive to a request under Rule XVII, and the applicant has not proffered evidence suggesting that such documents exist, the request will be denied on the ground that the applicant has not established that he was denied access to responsive documents (Rule XVII, para. 1). *See, e.g., Ms. V. Shinberg, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2007-2 (March 5, 2007), paras. 6-8. The Tribunal accordingly denied Applicant's Request No. 1.

(2) Request No. 2

13. Applicant requested the "Marsh Insurance claim stating the replacement value of [Applicant]'s office effects lost in the [circumstances of this case]."

14. The Fund responded that it has not been able to locate the requested document. Moreover, that document pertains to compensation Applicant had received for damage to personal effects resulting from events taking place some five years before the events giving rise to the instant case, when Applicant was undertaking an assignment at a different location. As to the belongings Applicant shipped to the location relevant to this case, the Fund annexed to its Answer Applicant's application for transit insurance to cover those belongings. In his Reply, Applicant provided a listing of items for which he seeks compensation. The Fund submits that if compensation is to be awarded, the listing supplied by the Fund should be regarded as more probative.

15. The Tribunal concluded that the requested document (which pertains to damage to personal effects incurred by Applicant during an earlier assignment at a different location) would not be probative of the issues of the case, given the record available to the Tribunal. Accordingly, Applicant's Request No. 2 was denied.

(3) Request No. 3

16. Applicant requested "[a]ll Fund documentation not strictly covered by attorney-client privilege relating to: (a) [Applicant]'s condition, benefits, pension and worker's compensation; and (b) the Fund's interpretation or understanding of its rules on worker's compensation, and on pension vesting."

17. As to Request No. 3(a), the Fund responded that it had produced "most" of the relevant documentation during the Grievance Committee proceedings. Additionally, with its Answer, the Fund provided the Minutes of the SRP Administration Committee's meetings relevant to its Decisions of January 22, 2016 and June 17, 2017 in Applicant's case, having redacted portions that the Fund maintains are protected by attorney-client privilege.

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[1] *See infra* CONSIDERATION OF THE ISSUES.

18. As to Request No. 3(b), the Fund objected that the request was "overly broad" and maintained that it had "already provided Applicant with all official statements of the Fund's policy on workers' compensation." With regard to "pension vesting," the Fund attached to its Answer Executive Board Document No. 285 (1948), i.e., the original SRP.

19. In the view of the Tribunal, Applicant failed to identify what additional documents he sought in making this wide-ranging request, beyond those that already had been produced to him. Rule XVII, para. 1, states that a request for production of documents "shall contain a statement of the Applicant's reasons supporting production accompanied by any documentation that bears upon the request." The Tribunal concluded that Applicant had neither established that he had been denied access to responsive documents or shown that requested documents would be probative of the issues of the case, given the entire record before the Tribunal. Accordingly, Applicant's Request No. 3 was denied.

B. Applicant's request for anonymity

20. In his Revised Application, Applicant requested anonymity pursuant to Rule XXII of the Tribunal's Rules of Procedure. Respondent observed that the Tribunal had granted Applicant anonymity in *Mr. "LL"*, Order No. 2016-1, in response to a request Applicant made in his initial Application. The Fund had not opposed that request.

21. In *Mr. "LL"*, Order No. 2016-1, note 1, the Tribunal granted Applicant anonymity "[i]n the light of the Tribunal's jurisprudence and the centrality of Applicant's health condition to the issues of the case." The Tribunal noted that it consistently has found "good cause" (Rule XXII, para. 4) for anonymity "where matters relating to the health of the applicant are central to the controversy," citing *Ms. "CC", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2007-6 (November 16, 2007), para. 7 (challenge to denial of disability pension).

22. On March 19, 2018, the Tribunal confirmed to the parties that Applicant will not be referred to by name in this Judgment.

23. Applicant additionally requests the exclusion of particular factual details that might identify him. (Revised Application, p. 1; *see also* Revised Application Form, p. 6.) When presented with similar requests in the past, the Tribunal has responded that it will endeavor to be "circumspect" in its dissemination of personal information relating to an applicant and others, but that its circumspection ". . . must, as necessary, yield to the primary obligation on the Tribunal to give sufficient reasons for its decision." *Ms. "GG" (No. 2), Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2015-3 (December 29, 2015), para. 77 and cases cited therein. The Tribunal adopts the same approach in this Judgment.

C. Applicant's request for oral proceedings

24. Article XII of the Tribunal's Statute provides that the Tribunal shall ". . . decide in each case whether oral proceedings are warranted." Rule XIII, para. 1, of the Rules of Procedure provides that such proceedings shall be held ". . . if . . . the Tribunal deems such proceedings useful."

25. Applicant requested oral proceedings limited to oral arguments by the parties' counsel. *See* Rule XIII, para. 6 ("The Tribunal may limit oral proceedings to the oral arguments of the parties and their counsel or representatives where it considers the written evidentiary record to be adequate.").

26. The Fund responded that it "defer[red] to the Tribunal's determination of whether such proceedings would be useful." The Fund further requested that the "subject matter of any oral proceedings be defined by the Tribunal, so that the scope of the oral argument may be limited to those areas that the Tribunal deems most useful."

27. The recent practice of the Tribunal has been to hold oral proceedings where they have been expressly requested by applicants and to limit such proceedings to the oral arguments of counsel, given the "benefit that the Tribunal has recognized of providing parties a forum in which to present their cases through oral argument even when the evidentiary record is complete (Rule XII, para. 6)." *Mr. "KK", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2016-2 (September 31, 2016), para. 43; *Ms. "NN", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2017-2 (December 11, 2017), paras. 21-22. In both of those cases, the Tribunal commented that it found the oral proceedings useful in clarifying the legal issues and in providing an opportunity to probe disputes of fact so as to enhance the legal appreciation of the record of the case. *Mr. "KK"*, para. 44; *Ms. "NN"*, para. 23.

28. On March 19, 2018, the Tribunal notified the parties that it had granted Applicant's request for oral proceedings limited to the oral arguments of parties' counsel. At the same time, the Tribunal denied Respondent's request that the Tribunal limit the issues to be addressed in oral proceedings. Accordingly, parties' counsel were able to address in oral argument any of the issues pending before the Tribunal. The Tribunal also decided that the oral proceedings would be "held in private," per Article XII of the Statute and Rule XIII, para. 1, in light of its decision that Applicant would not be referred to by name in the Tribunal's Judgment.[2]

29. Oral proceedings were held on April 25, 2018. Each party was allotted a fixed period for counsel to present its case, followed by questioning by the Tribunal.

OVERVIEW OF FACTUAL AND PROCEDURAL HISTORY

30. Applicant suffered a work-related injury in 2010. The nature of the injury and resulting medical condition were such that Applicant's prognosis initially was uncertain, and his injury was only later determined to be permanently and totally disabling.

31. In 2010, the Director of the Human Resources Department (HRD) raised with Applicant the possibility of filing a workers' compensation claim. Applicant did not file a workers'

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[2] *See supra* Applicant's request for anonymity.

compensation claim at that time, but he later did so in 2011. The Workers' Compensation Claim Administrator[3] rejected that claim as untimely.

32. In fall of 2011, Applicant was separated from the Fund for medical reasons, in accordance with GAO No. 16, following a medical assessment that found him unfit for duty. Applicant did not challenge his medical separation. As a participant in the SRP, Applicant was evaluated prior to separation to determine whether he was eligible for a disability pension in terms of SRP Section 4.3. The SRP Administration Committee decided that Applicant was not eligible for a disability pension; Applicant did not seek review of that decision.

33. As a staff member separating for medical reasons without access to a disability pension, Applicant received Separation Benefits Fund (SBF) benefits pursuant to GAO No. 16. In accordance with the options available under that GAO, Applicant used the SBF benefits to provide a paid-leave bridge to his early retirement date, taking the remainder of the SBF benefits as a lump-sum payment. Applicant's early retirement pension (SRP Section 4.2) commenced in early 2012. Applicant elected to take a commutation payment of one-third of that early retirement pension, pursuant to SRP Section 15.1(a).

34. In late 2011, Applicant filed fifteen Grievances with the Fund's Grievance Committee. These Grievances related to his work-related injury, the events surrounding that injury, his separation from the Fund, and the denial of workers' compensation benefits. In response, the Fund waived its timeliness defense as to Applicant's workers' compensation claim. Thereafter, the Workers' Compensation Claim Administrator found Applicant eligible for benefits associated with "temporary" but not "permanent" total disability. Accordingly, he was eligible for reimbursement of medical expenses but not for a workers' compensation annuity. Applicant revised his workers' compensation challenge before the Grievance Committee accordingly. The Grievance Committee, following a hearing, remanded the matter to the Claim Administrator for reconsideration in light of the Grievance Committee's recommendations. Upon reconsideration, in 2015, the Claim Administrator found Applicant's total disability to be "permanent" in terms of the workers' compensation policy, entitling him to a workers' compensation annuity of 66-2/3 percent of his final pensionable remuneration, in accordance with GAO No. 20, Section 5.01.1.

35. Fund Management, following a further Recommendation of the Grievance Committee, made Applicant's workers' compensation annuity retroactive to the date of his early retirement pension, and required him to repay (pro-rated over a four-year period) the lump-sum SBF (i.e., medical separation) benefit he had earlier received, on the ground that he was now receiving a workers' compensation annuity.

36. Fund Management also referred questions to the SRP Administration Committee relating to the "coordination" of Applicant's workers' compensation annuity and SRP pension benefits. As a result, the Committee decided to reconsider its 2011 decision that Applicant was not eligible for a disability pension. In 2016, it concluded that Applicant's early retirement pension

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[3] Pursuant to GAO No. 20, Rev. 3, Section 2.01.5, the Fund's workers' compensation "Claim Administrator" is the "company which has been engaged to administer the provisions of this Order [GAO No. 20]."

should be replaced retroactively by a disability pension, on the ground that he had been permanently and totally disabled since before his early retirement date. The Committee further decided that Applicant would be paid a "coordinated" disability pension and workers' compensation annuity, capped at the amount payable to him as a workers' compensation annuity, financed in part by the SRP, and reduced by the amount of the commutation payment he had taken on his early retirement pension. Applicant sought review of these decisions through the channel provided by the SRP Administration Committee's Rules of Procedure. In its 2017 Decision on Review, the Committee denied Applicant's challenges.

37. The Grievance Committee also issued further decisions in 2016 and 2017, dismissing Applicant's additional Grievances, as either outside of the Committee's jurisdiction or as not having been proved. These included Applicant's contentions that the Fund had violated a "duty of care" to ensure his health and safety, that he was entitled to compensation for alleged injury to his spouse, that he should have been reimbursed for lost personal effects, and that the Fund should compensate him for lost interest on retroactive payments, tax consequences, and delays in its decision-making process. Fund Management accepted the Grievance Committee's recommendations.

FACTUAL BACKGROUND

38. The key facts, some of which are disputed between the parties, may be summarized as follows.

A. Applicant's work-related injury (2010)

39. Applicant, then a Fund staff member, sustained a work-related injury while engaged in an assignment overseas. The parties differ in their accounts of the events surrounding the injury.

B. Denial of workers' compensation claim as untimely (2011)

40. Approximately two months following his injury, Applicant was diagnosed with a medical condition arising from it. Upon notifying the HRD Director of this condition, he was advised of the possibility of filing a workers' compensation claim and was sent the paperwork for doing so. He did not file a workers' compensation claim at that time. Meanwhile, an initial fitness-for-duty assessment undertaken not long after the injury indicated that Applicant would be able to return to work by mid-year 2010; Applicant pursued the possibility of various assignments within the Fund. Later, however, Applicant notified the Fund that he had experienced a setback in his recovery.

41. In early 2011, Applicant filed a workers' compensation claim based on the 2010 injury and his continuing medical condition. The claim was rejected by the Fund's Workers' Compensation Claim Administrator as untimely under GAO No. 20 (Workers' Compensation Policy), Rev. 3 (November 1, 1982).

C. Separation from the Fund for medical reasons; denial of disability pension; receipt of Separation Benefits Fund (SBF) benefits; commencement of early retirement pension, including commutation payment (2011-2012)

42. On May 31, 2011, following the denial of his workers' compensation claim as untimely and after a further fitness-for-duty assessment, the HRD Director notified Applicant that he would be separated from the Fund for medical reasons, pursuant to GAO No. 16 (Separation of Staff Members), Rev. 6 (February 28, 2008), Section 10. This communication advised Applicant of his right to object to the medical separation and to seek a further medical opinion from a panel of experts in accordance with GAO No. 13 (Leave Policies), Annex I, Section 2.02. Applicant did not challenge the determination that he would be separated for medical reasons.

43. GAO No. 16, Rev. 6, Section 10.02, provides that the "separation of a staff member for medical reasons who is a participant in the Staff Retirement Plan shall not be implemented until it has been determined, in accordance with the relevant provisions of the Staff Retirement Plan, that the staff member will receive a disability pension." Accordingly, as Applicant was an SRP participant, his case was referred to the SRP Administration Committee to determine whether he should be granted a disability pension in accordance with SRP Section 4.3. The HRD Director advised Applicant: "If it is determined that you are eligible for a disability pension, you will separate with a disability pension. . . . If you are not found eligible for a disability pension, you will separate from the Fund for medical reasons with access to Separation Benefits Fund resources as provided in GAO No. 16, Section 10.04." (Letter from HRD Director to Applicant, May 31, 2011.)

44. On August 17, 2011, the SRP Administration Committee notified Applicant that, "based on the medical evidence and the recommendation of the Medical Advisor," it had concluded that he did not meet the requirements for disability retirement under Section 4.3 of the Plan. Applicant was advised of his right to seek review of that Decision under the Committee's Rules of Procedure. Applicant did not challenge the denial of a disability pension.

45. On September 13, 2011, the HRD Director confirmed the administrative arrangements for Applicant's separation for medical reasons. That communication stated *inter alia*:

> You hereby acknowledge that the Fund's agreement to pay you separation benefits in connection with your separation for medical reasons is based on the finding that you are not eligible for disability retirement under the Fund's Staff Retirement Plan. If this finding is later reversed and you are considered eligible for disability retirement, you will be required to reimburse the Fund for any separation benefits received following the date on which your disability retirement pension commences.
>
> If, after the effective date of this letter, you become disabled and are eligible to receive disability retirement benefits from the Fund, the obligation of the Fund to provide you with benefits from the Separation Benefits Fund in connection with your separation for medical reasons as provided hereunder shall cease with respect to

> any period for which a disability pension is paid. In addition, if you have already received a lump-sum payment from the Separation Benefits Fund for the period for which a disability pension is paid, you will be required to reimburse, proportionately, the SBF payment you have received for the period mentioned above.
>
> I would appreciate it if you would confirm that you have been informed of the above arrangements by signing and returning a copy of this letter.

(Letter from HRD Director to Applicant, September 13, 2011.) Applicant signed the separation arrangements letter with the notation that "signature does not imply that I accept that the SB compensation for injury incurred during an IMF assignment and IMF negligence."

46. Applicant's separation arrangements included a notice period of 60 days, as well as the maximum payment (22.5 months' salary) from the Separation Benefits Fund (SBF) pursuant to GAO No. 16. Applicant opted to receive his SBF benefits as a combination of separation leave and lump-sum payment. The period of paid separation leave bridged Applicant to his eligibility date for an early retirement pension under SRP Section 4.2.

47. Applicant's early retirement pension (SRP Section 4.2) commenced on February 1, 2012. Applicant elected to take a commutation payment of one-third of that early retirement pension, pursuant to SRP Section 15.1(a).

CHANNELS OF ADMINISTRATIVE REVIEW

A. Applicant's Grievance Committee submission (2011)

48. On November 29, 2011, Applicant filed fifteen Grievances with the Fund's Grievance Committee relating to his work-related injury, the events surrounding that injury, his separation from the Fund, and the denial of workers' compensation benefits.

49. Grievance 11 challenged the denial of Applicant's claim for workers' compensation benefits. The Fund waived its timeliness defense as to that claim. At the same time, the Grievance Committee and the parties agreed to suspend proceedings on the fourteen other Grievances while the workers' compensation claim was reconsidered by the Claim Administrator.

B. Proceedings relating to Applicant's claim for workers' compensation benefits (2012-2015)

(1) Decisions of the Workers' Compensation Claim Administrator (2012)

50. On April 11, 2012, the Workers' Compensation Claim Administrator notified Applicant that his claim was "compensable." (Letter from Workers' Compensation Claim Administrator to Applicant, April 11, 2012.) After Applicant sought clarification, the Claim Administrator informed him on August 30, 2012 that he was deemed to be "temporarily" (in contrast to

"permanently") totally disabled. (Email from Workers' Compensation Claim Administrator to Applicant, August 30, 2012.) As brought out in the 2014 Grievance Committee proceedings (*see below*), the Workers' Compensation Claim Administrator, in responding to Applicant's query, consulted with Fund representatives and received documentation relating to the SRP Administration Committee's 2011 decision to deny Applicant a disability pension under the SRP. (*See* Grievance Committee Report and Recommendation, May 15, 2014, pp. 7-13.)

51. The Claim Administrator's determination that Applicant was "temporarily" disabled in terms of the workers' compensation policy meant that he was entitled only to the reimbursement of medical expenses and not to a workers' compensation annuity under GAO No. 20, Section 5.01.1. According to Respondent, the Grievance Committee proceedings were then suspended for settlement discussions and later resumed. Applicant revised his Grievance to challenge the Claim Administrator's determination that he was "temporarily" rather than "permanently" disabled under the workers' compensation policy.

(2) Grievance Committee's Recommendation on workers' compensation Grievance and Management's acceptance (2014)

52. In the Grievance Committee, the Fund opposed Applicant's request for a workers' compensation annuity on the ground that it was barred by the denial of the SRP disability pension and that Applicant '"should not be permitted to use his workers' compensation claim as a 'back-door' to seek a new disability determination.'" (Grievance Committee Report and Recommendation, May 15, 2014, p. 18.) The Grievance Committee rejected that argument, concluding that the Workers' Compensation Claim Administrator "cannot be preempted by and should not defer to the Administration Committee when deciding worker compensation annuity claims." (*Id.*, p. 31.)

53. The Grievance Committee held a hearing at which a Fund HR Officer and a representative of the Workers' Compensation Claim Administrator testified. The record of those proceedings revealed uncertainty on the part of the Claim Administrator as to how to proceed in distinguishing "temporary" from "permanent" disability under GAO No. 20, along with multiple exchanges with the Fund on that question. The witnesses also testified as to their understanding of what impact, if any, the determination under the SRP should have upon the question before the Workers' Compensation Claim Administrator. (*Id.*, pp. 27-31.) The Grievance Committee found in that testimony "contradictions and vacillation regarding the proper interpretation of GAO No. 20 and its interplay with the SRP." (*Id.*, p. 30.)

54. The Grievance Committee record additionally documented elements of the process by which the SRP Administration Committee's 2011 decision denying Applicant a disability pension had been taken, including the existence of differing versions of the Medical Advisor's report produced in connection with that determination. (*Id.*, pp. 5-7, 39-40.)

55. Although the Grievance Committee "disagree[d] that the Claim Administrator was required to defer to the [SRP] Administration Committee," it took the view that the "two decision-makers should use the same standards when deciding disability claims." (*Id.*, p. 33.) The Grievance Committee concluded: "GAO No. 20, Section 5, requires the Claim Administrator to apply the same standards for total and permanent disability that govern the

Administration Committee. As the Fund itself pointed out, worker compensation annuity and disability pension decisions should be harmonized." (*Id.*) The Grievance Committee accordingly faulted the Claim Administrator for failing to apply "[SRP] Section 4.3, as interpreted by the Administrative Tribunal" and instead applying its "own definitions of total and permanent disability" in reaching a determination under the workers' compensation policy. (*Id.*, p. 34.)

56. The Grievance Committee also concluded that the medical reports on which the Workers' Compensation Claim Administrator had relied were "sufficiently unclear and contradictory that they could not provide an evidentiary basis for a reasoned and reasonable decision." (*Id.*, p. 40.) In this regard, said the Grievance Committee, the Claim Administrator had an obligation to obtain clarification from physicians and that the "Fund also had an obligation to ensure that [the Workers' Compensation Claim Administrator] had access to all medical reports and opinions that were relevant to [Applicant's] condition." (*Id.*)

57. On May 15, 2014, the Grievance Committee issued its Report and Recommendation, recommending rescission of the Workers' Compensation Claim Administrator's decision denying Applicant's request for a workers' compensation annuity. The Grievance Committee further recommended that the question of eligibility for the annuity, that is, of the "permanency" of Applicant's total disability, be remanded to the Claim Administrator for reconsideration in light of updated medical reports and the Grievance Committee's conclusions relating to the process by which workers' compensation annuity determinations are to be made. (*Id.*, pp. 47-50.) In particular, the Grievance Committee concluded that the Claim Administrator's decision:

> (1) did not comply with the requirements in Section 5.01.1 of GAO No. 20 that the Claim Administrator render an independent determination with respect to an annuity claim and base a decision on the same standards that govern the SRP's disability pension determinations, (2) did not comply with relevant Administrative Tribunal decisions governing the decision-making process for disability pensions, as made applicable to this case by Section 5.01.1 of GAO No. 20, and (3) was made "in disregard of essential facts" (i.e., did not seek up-to-date medical information prior to the decision) and was manifestly erroneous when measured against all of the medical evidence that was available in August-September 2012.

(*Id.*, p. 47.)

58. The Grievance Committee also recommended that the Fund "re-examine GAO Nos. 13, 16 and 20, as well as the pension disability provisions of the SRP," which it termed "complex and confusing," and that "relevant personnel at the Fund and at the Claim Administrator be given additional training on the enforcement of the SRP and relevant GAOs." (Grievance Committee Report and Recommendation, May 15, 2014, pp. 51-52.)

59. On June 5, 2014, Fund Management accepted the Grievance Committee's recommendation that the Claim Administrator reconsider whether Applicant was eligible for a workers' compensation annuity on the basis of "permanent total disability," taking account of the

considerations identified by the Grievance Committee in its Report and Recommendation. (Letter to Applicant from Special Advisor to the Managing Director, June 5, 2014.)

(3) Reconsideration by Workers' Compensation Claim Administrator, finding of "permanent total disability" (2015)

60. On March 5, 2015, the Claim Administrator rendered a new decision, concluding that Applicant met the standard for "permanent total disability" under the workers' compensation policy and was therefore entitled to a workers' compensation annuity equivalent to 66-2/3 percent of his final pensionable remuneration, pursuant to GAO No. 20, Section 5.01.1. Notably, the decision stated the issue as "[w]hether [Applicant] is permanently and totally disabled according to the Fund's Staff Retirement Plan." The Claim Administrator referred to the Medical Advisor's review of medical records and concluded that Applicant's permanent total disability was a "direct result" of the events of early 2010; it dated the injury from Applicant's commencement of treatment for the medical condition two months thereafter. The Claim Administrator concluded that Applicant was "unlikely to be able to return to work in any capacity in the foreseeable future."

(4) Grievance Committee's further Recommendation on workers' compensation claim and repayment of lump-sum Separation Benefits Fund (SBF) benefit (2015)

61. On October 1, 2015, the Grievance Committee issued a further Recommendation, aimed at resolving disputes between Applicant and the Fund as to how the workers' compensation annuity should be implemented. (Grievance Committee Report and Recommendation, October 1, 2015.) The Grievance Committee stated that it sought to provide a "make whole" remedy to place Applicant in the ". . . same financial status in which he would have been if his eligibility for a worker compensation annuity had not been delayed by [the Claim Administrator]'s erroneous decision on the merits of his annuity application." (*Id.*, p. 5.)

62. The Committee recommended that the workers' compensation annuity be made retroactive to February 1, 2012, observing that Applicant had been "paid a full salary through January 31, 2012." At the same time, the Committee rejected Applicant's argument that he had suffered any disadvantage by not having been placed in "special sick leave" status from the onset of his work-related injury. (*Id.*, pp. 7-8 and note 3.)

63. The Grievance Committee also decided to recommend (as proposed by the Fund) that, having been granted the workers' compensation annuity, Applicant should now be required to repay the lump-sum SBF benefit he received under GAO No. 16 when he was separated for medical reasons without access to a disability pension. The Grievance Committee reasoned that "although the SRP disability process and the worker [compensation] annuity process under GAO No. 20 are distinct, they are also to be coordinated in a way that recognizes the need to effectuate a consistent Fund policy regarding staff who are injured or made ill by their jobs. To deny separation benefits to a staff member on disability pension, but to allow the same benefits to an employee on a worker compensation annuity," said the Grievance Committee, "would not be a consistent or equitable policy." (*Id.*, p. 10.) The Committee accordingly concluded that although GAO No. 16 does not expressly refer to workers' compensation benefits, the "policy of coordinating separation benefit payments and disability pension payments must also apply to

worker compensation annuities" and that "Fund law therefore bars Grievant from receiving both a lump-sum medical separation payment from the SBF and a worker compensation annuity." (*Id.*, pp. 10-11.) The Committee further recommended, to avoid hardship, that the reimbursement of the SBF benefits should be pro-rated over a four-year period as deductions from Applicant's workers' compensation annuity payments. (*Id.*, p. 12.)

64. In the same Recommendation, the Grievance Committee also noted the Fund's proposal that the pension paid under the SRP should be supplemented to bring the combined payments to the level of the workers' compensation annuity, and that the annuity payments be reduced by the amount of the SRP commutation payment that Applicant had taken on his early retirement pension. The Grievance Committee concluded that it did not have jurisdiction to decide these issues and that they should instead be considered by the Administration and Pension Committees of the SRP. (*Id.*, pp. 16-17.) In the interim, recommended the Grievance Committee, the Fund should "commence payment of the worker compensation annuity, consistent with GAO No. 20, without any offset for past or future SRP payments." (*Id.*, p. 17.)

65. The Committee also recommended denial of Applicant's request for moral damages for delay in properly determining his entitlement to the workers' compensation annuity. (*Id.*, pp. 17-18.)

(5) Fund Management's acceptance of Grievance Committee's Recommendation and referral of questions to SRP Committees (2015)

66. On November 6, 2015, Fund Management notified Applicant that it accepted the Grievance Committee's recommendations as follows: (i) Applicant would be granted a workers' compensation annuity in accordance with GAO No. 20, Section 5.01, retroactive to his separation date of February 1, 2012; (ii) the lump-sum SBF benefit earlier paid to Applicant on the basis of his medical separation would be recovered by deductions from his workers' compensation annuity payments on a pro-rated basis over four years, beginning with the start of those payments; (iii) reimbursement of Applicant's attorney's fees would be held in abeyance pending final recommendation on that question by the Grievance Committee[4]; and (iv) no additional monetary compensation would be paid to Applicant in connection with the Grievance. (Letter from Deputy Managing Director and Chief Administrative Officer to Applicant, November 6, 2015.)

67. Additionally, and also in accordance with the Grievance Committee's Recommendation, Fund Management notified Applicant that it would "refer to the appropriate SRP Committees the open question of the impact on [his] SRP benefits arising from the decision to grant [him] a workers' compensation annuity," in particular "how [Applicant's] SRP pension benefit should be

[4] The record indicates that the Grievance Committee later recommended the payment of attorney's fees in the sum of $36,554.35, while denying $7000.05 in requested fees relating to a motion for reconsideration. (Grievance Committee's Recommendation with Respect to Grievant's Request for Reimbursement of Attorney Fees, November 13, 2015.) The parties do not dispute that the Fund paid Applicant the recommended sum.

coordinated with [his] workers' compensation annuity." (*Id.*) Management's notification to Applicant concluded:

> Pending the outcome of the SRP Committees' review, your monthly annuity benefits will begin as of November 1, 2015, or as soon as practicable thereafter. . . . Please note however, that any workers' compensation annuity retroactive amounts due to you will not be paid until the conclusion of the review by the SRP Committees. The retroactive amount due for your workers' compensation annuity benefit may be partially offset if the SRP Committees make adjustments to your past and future pension benefit.

(*Id.*) (Emphasis in original.)

68. According to the Fund, Applicant was paid both his early retirement pension payment and his workers' compensation annuity for the months of November 2015 – January 2016.

C. Applicant's initial Application to the Administrative Tribunal (2015) and Tribunal's Order No. 2016-1 (June 28, 2016)

69. On December 28, 2015, Applicant filed his initial Application with the Administrative Tribunal, challenging the following decisions: (i) to deny his request for compensation for alleged administrative failures and abuse of discretion in the delayed award of the workers' compensation annuity; (ii) to require that he repay Separation Benefits Fund (SBF) benefits, in the light of the later award of the workers' compensation annuity; and (iii) to deny his request for compensation for alleged premature separation from the Fund and failure to provide workers' compensation special leave to afford an opportunity for recovery from his work-related injury.

70. The Fund filed a Motion for Summary Dismissal, seeking that the Application be dismissed without prejudice or "held in abeyance," on the ground that Applicant had not met the requirement of Article V, Section 1, of the Tribunal's Statute that all available channels of administrative review must be exhausted before an application may be submitted to the Tribunal. Although the Fund conceded that the claims presented in the Application were themselves ripe for review, it maintained that closely related claims brought by Applicant remained pending before the SRP Administration Committee and the Grievance Committee. Applicant objected that claims he raised before the Tribunal were not related to his claims pending in the channels of review.

71. The parties confirmed in further submissions to the Tribunal that several matters relating to Applicant's separation from the Fund following his work-related injury, and to the payments to which he was entitled in relation to these events, remained the subject of consideration in the review channels. The Tribunal concluded that these claims were "closely related" to those that Applicant sought to raise before the Tribunal and that it ". . . would not serve the interests of justice to decide the issues of the case before questions concerning the legal relationship between separation for medical reasons, workers' compensation benefits, and pension benefits have been

addressed in the first instance by the competent bodies of the Fund." *Mr. "LL"*, Order No. 2016-1, para. 6.

72. At the same time, the Tribunal took note of Applicant's assertion that delaying a judgment on his challenge to the decision requiring his repayment of SBF benefits, while related claims remained pending, would impose a financial hardship on him. In the circumstances, the Tribunal gave both parties the opportunity to comment on the possibility of suspending the pleadings until the matters pending in the channels of review were resolved. Neither party objected to that proposal.

73. Accordingly, the Tribunal decided not to grant the Motion for Summary Dismissal. At the same time, pursuant to its authority ". . . in exceptional cases [to] modify the application of these Rules [of Procedure], including any time limits thereunder" (Rule XXI, para. 2), the Tribunal suspended the time limits in relation to the Application until: (a) any appeal pending before the SRP Administration Committee in respect of Applicant's pension payments had been decided; and (b) Management had rendered final decisions on any recommendations issued by the Grievance Committee in respect of Applicant's pending Grievances or the Committee had denied jurisdiction in respect of those Grievances.

74. The Tribunal also gave consideration to the possibility of granting provisional relief to Applicant in the form of suspending, during the pendency of the Tribunal proceedings, the decision that Applicant repay SBF benefits. The Tribunal considered this possibility on its own motion, in view of Applicant's assertion of financial hardship, and took its decision following the submission of further views and information from the parties. The Tribunal observed that Article VI, Section 4, of the Tribunal's Statute provides: "The filing of an application shall not have the effect of suspending the implementation of the decision contested." Nonetheless, the Tribunal noted, the accompanying Commentary on the Statute,[5] p. 27, supports the view that if an applicant could show that, in the absence of interim measures, implementation of the contested decision would cause him or her irreparable harm during the period between the filing of an application and the rendering of the Tribunal's judgment, the Tribunal could grant provisional relief. On the record of the case, the Tribunal found that standard had not been met. Accordingly, it concluded that provisional relief was not warranted.

75. In sum, the Fund's Motion for Summary Dismissal was not granted. Neither was Applicant granted provisional relief. The pleadings in the Tribunal were suspended.

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[5] The consolidated Commentary on the Statute comprises the Report of the Executive Board to the Board of Governors on the Establishment of an Administrative Tribunal for the International Monetary Fund (1992) and the Report of the Executive Board to the Board of Governors on Amendments to the Statute of the Administrative Tribunal for the International Monetary Fund (2009).

D. SRP Administration Committee proceedings (2016-2017)

(1) SRP Administration Committee's Decision and Findings (January 22, 2016)

76. Following Fund Management's November 6, 2015 referral to the SRP Committee of the question of what effect the decision to grant Applicant a workers' compensation annuity retroactive to his separation from the Fund should have upon his pension benefits, the SRP Administration Committee reconsidered its 2011 decision denying Applicant a disability pension. The Committee had before it both the Fund's submission on that question and Applicant's response. (*See* Minutes of SRP Administration Committee, December 3, 2015, p. 2; SRP Administration Committee Decision and Findings, January 22, 2016, p. 5.) On February 8, 2016, the Secretary of the SRP Administration Committee notified Applicant that the Administration Committee had recommended, and the Pension Committee had approved, that Applicant be paid a disability pension under SRP Section 4.3, retroactive to and in lieu of the early retirement pension under SRP Section 4.2 that he had begun receiving on February 1, 2012, and that he would receive a "coordinated" disability pension and workers' compensation annuity, capped at the amount payable to him as a workers' compensation annuity, financed in part by the SRP, and reduced by the commutation payment Applicant had taken on his early retirement pension. (Email from Secretary of the SRP Administration Committee to Applicant, February 8, 2016, attaching SRP Administration Committee Decision and Findings, January 22, 2016, pp. 1-3.) (Answer, Annex 34.)

77. In sum, the Committee decided: (1) to reconsider its 2011 decision that Applicant was not eligible for a disability pension in terms of SRP Section 4.3; (2) that Applicant should be retired on a disability pension, in lieu of and retroactive to the date of his early retirement pension of February 1, 2012 because of his "permanent and total disability for the performance of any duty with the Fund that he might reasonably be called upon to perform"; (3) subject to the Pension Committee's approval of the retroactive disability pension, that "in accordance with Section 10.5 of the Plan and EBAP/92/146, to offset against that disability pension the amounts prescribed as payable under the workers' compensation regulations of the District of Columbia"; and (4) the commuted amount of Applicant's early retirement pension paid to him in 2012 shall be deemed to have been paid to him pursuant to an election under Section 15.1(b) for the disability pension, and there shall be a consequential reduction in the annuity payable to him. (SRP Administration Committee Decision and Findings, January 22, 2016.)

78. Invoking SRP Section 7.2(b), the Committee stated that it had authority to reconsider a decision previously taken, and to interpret the Plan and determine whether any person has a right to any benefit under the Plan. In the view of the Committee, there was "no longer any genuine dispute that [Applicant] is permanently and totally disabled, and has been so since before his retirement from the Fund in 2012." (*Id.*, p. 2.) The Committee noted that the Grievance Committee and Fund Management had accepted the determination by the Workers' Compensation Claim Administrator that Applicant had been "permanently and totally disabled since before his retirement" based on a 2014 review of medical records. "This is a material change," said the Committee, which "renders the 2011 advice of [the Committee's Medical Advisor] moot." (*Id.*, p. 2.)

79. "Management's acceptance of the determination that [Applicant] has been permanently and totally disabled since 2011, coupled with [Applicant]'s own statements and representations of his doctor's opinions, constitute conclusive proof," said the Committee, "that [Applicant] is and has been permanently and totally disabled for purposes of Section 4.3 [of] the Plan since before his retirement in 2012." (*Id*., pp. 1-2.) Accordingly, it recommended, ". . . pursuant to Section 4.3(a) of the Plan, that the Pension Committee find [Applicant] should be retired on a disability pension retroactive to February 1, 2012, in lieu of the early retirement pension he has been receiving, because of his permanent and total disability for the performance of any duty with the Fund that he might reasonably be called upon to perform." (*Id.*)

80. The Committee next addressed the question of "coordination" of Applicant's workers' compensation benefits with his SRP pension. The Committee observed that the "SRP is silent about coordination of workers' compensation and *early retirement* benefits because in the normal processing of claims, an early retirement pension would not be awarded to a staff member who was determined to be totally and permanently disabled." (*Id.*, p. 4.) (Emphasis added.) In the view of the Administration Committee, "failure to coordinate benefits would result in an unjustifiable windfall to [Applicant], because had he been timely determined to be totally and permanently disabled, he would have received a disability pension (not an early retirement pension) that would have been coordinated with his workers' compensation annuity." (*Id.*) The Committee noted that although the Plan is silent as to the coordination of workers' compensation benefits and an early retirement pension, Section 10.5 allows for offsetting workers' compensation benefits against a disability pension.

81. The Committee accordingly decided: (1) "The Administration Committee can achieve the SRP policy of coordinating benefits for an individual who is permanently and totally disabled for work-related reasons, by reconsidering its 2011 denial of the disability pension, and restoring a disability pension retroactive to February 2012. In this way, the early retirement pension that [Applicant] has been receiving will be replaced, retroactively, by the <u>larger</u> disability pension." (Emphasis in original.) (2) "It follows, pursuant to the Executive Board's decision in EBAP/92/146, that [Applicant] will not receive benefits under both the SRP and the workers' compensation policy; rather, he will receive the larger of the benefits, which, in his case, is the workers' compensation annuity." (3) "The amount of that annuity will be partially financed from the SRP in accordance with EBAP/92/146 and Section 10.5 of the Plan."[6] (*Id.*, p. 4.)

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[6] The referenced Executive Board decision (EBAP/92/146) provides in part:

> 1. (a) The pension payable in respect of total and permanent disability resulting from a work-related illness or injury, and the benefits payable in respect of work-related death, shall be the higher of the amounts specified in GAO No. 20 and the amounts of the disability pension or the death benefits, respectively, payable under the provisions of the Staff Retirement Plan.
>
> (b) In financing these pensions or benefits, the Fund shall first pay from its own resources the full amounts prescribed as payable under the workers' compensation regulations of the District of Columbia. The balance of the financing shall be paid from the Staff Retirement Plan under the provisions

82. The Committee also endorsed an "additional offset of the commuted pension payment." The Committee noted that when Applicant retired in 2012 on an early retirement pension he had elected the maximum (one third) commutation payment, pursuant to SRP Section 15.1(a). "He could have made the same election under Section 15.1(b) if he had been retired on a disability pension as of that date, with a consequential reduction in the annuity. According to Section 15.1(c), the election under subsection (a) or (b) shall be irrevocable. Therefore," said the Committee, "the commuted payment that [Applicant] received in 2012 should be deemed to have been received pursuant to an election under Section 15.1(b), and the annuity payable to him shall be reduced using the commutation factors in Schedule D." (*Id.*, p. 5.)

(2) SRP Administration Committee's Decision on Review (June 17, 2017)

83. In accordance with the SRP Administration Committee's Rules of Procedure, Applicant pursued his right to review before that Committee, following an extension of time to raise before the Grievance Committee issues relating to the tax treatment of his disability pension and workers' compensation annuity. In his request for review, Applicant asserted: the Committee was without authority under the Plan to replace, retroactively, his early retirement pension with a disability pension at the unilateral request of the Fund; even if Applicant were properly granted a disability pension, then SRP Section 10.5 would operate to offset only the amount by which the disability pension exceeded the early retirement pension, and; the Committee violated its fiduciary duties by using SRP funds to pay part of the Fund's workers' compensation obligation.

84. On June 17, 2017, the SRP Administration Committee rendered its Decision on Review, sustaining its earlier Decision and Findings. (SRP Administration Committee Decision on Review, June 17, 2017.) In the Decision on Review, the Committee emphasized that a disability pension is not an "option" under the terms of the Plan, but rather is "mandatory under the Plan if the employer makes such a request based on a finding that the participant is permanently and totally disabled." (*Id.*, p. 3.) (Emphasis in original.) The Committee cited SRP Section 4.3 that a participant in contributory service who meets the requirements for a disability pension '"*shall be retired* on a disability pension before his normal retirement date"' and that this can be initiated either '"by the participant *or the Employer*."' (*Id.*) (Emphases in original.) Furthermore, SRP

> governing the payment of disability pensions or death benefits, as applicable. If the aggregate amount of such payments is less than the amounts payable under (a) above, the Fund will pay the difference from its own resources.

The referenced SRP Section 10.5 provides:

> Any amounts which may be paid or payable to any participant or to his dependents or otherwise on his account, as the result of premiums, taxes or contributions paid by the Employer under any Workmen's Compensation Law or plan, or under any workman's compensation or employer's liability policy, or under any other plan, whether self-insured or otherwise, on account of his death or of any incapacity for which he shall have been retired hereunder, may be offset against and payable, or deemed to be payable, in lieu of such part of his disability pension provided hereunder, in such equitable manner as the Administration Committee shall decide.

Section 7.2(b) provides that "nothing herein shall prevent the Administration Committee, at its own discretion, from reconsidering a decision taken . . . ." Additionally, said the Committee, under SRP Section 4.2(a), a participant on disability retirement is not eligible to draw an early retirement pension. "Based on these provisions, the Committee concludes that the intent of the Plan is that an individual who is permanently and totally disabled is not eligible for an early retirement pension, but instead must be provided a disability pension." (*Id.*, p. 4.) (Emphasis in original.)

85. Turning to the issue of "coordination" of the workers' compensation annuity and the SRP pension, the Committee observed that SRP Section 10.5 provides that amounts payable under the workers' compensation policy may be offset against, or paid in lieu of, the disability pension "in such equitable manner as the Administration Committee shall decide." The Committee asserted that when it "exercises its discretion" to achieve an equitable offset, it is free to review any relevant documents and that it was "entirely reasonable for the Committee to follow the Board's decision [EBAP/92/146], or at least take this decision into consideration, when it makes an equitable determination regarding offsets under Section 10.5 of the Plan." (*Id.*, p. 4.)

86. The Board's decision, said the Committee, had "reiterated the longstanding rule" that a participant should receive "*either* the workers' compensation annuity *or* the disability pension, whichever is higher" (emphasis added), and that the "Fund will *first* draw on its administrative budget up to the amount payable under the workers' compensation regulations of the District of Columbia, and *second*, any balance shall be paid by the SRP (up to the amount of the disability pension)." (Emphasis in original.) This change, said the Committee, "brought the Fund into line with the law and practice in the U.S. for pensions and workers' compensation." (*Id.*, p. 4.)

87. The Committee explained that, as of February 1, 2012, Applicant receives only the amount of his annual workers' compensation annuity. That annuity is larger than the amount of his disability pension, being approximately 1.3 times his disability pension. Following the 1992 Board decision, sixty-eight percent of this worker's compensation benefit is financed by the SRP because the "Fund first pays the amount payable under D.C. law from its administrative budget, . . . and the balance . . . is payable by the SRP." (*Id.*, p. 5 and note 3.)

88. "Coordination" of workers' compensation and pension benefits, said the Committee, serves the policy of increasing the total benefit pool available to all Plan participants. (*Id.*, p. 5.) "In light of the SRP's offset provision (Section 10.5), the Board decision (EBAP/92/146), and GAO 20, Section 6.1, all of which establish that the Fund does not intend for a participant who is permanently and totally disabled to receive *both* a workers' compensation annuity and the entire disability pension under Section 4.3, the Committee cannot countenance the excess award that [Applicant] seeks." (*Id.*, p. 8.) (Emphasis in original.)

89. Applicant additionally had argued that the maximum liability borne by the IMF (in contrast to the SRP) should not be limited by the ceiling on workers' compensation payments established by District of Columbia law. The Committee noted that argument, but it declined to decide the issue, stating that "[a]ny challenge to the Board's decision and the calculation of the workers' compensation annuity thereunder is within the jurisdiction of the Grievance Committee, not the Administration Committee." (*Id.*, pp. 5-6.)

E. Grievance Committee proceedings (2016-2017)

90. In parallel with proceedings in the SRP Administration Committee, the Grievance Committee also took a series of decisions on Applicant's case in 2016 and 2017.

(1) Grievance Committee's Jurisdictional Decision with respect to Grievances 1-8, Final Recommendation with respect to Grievances 9, 10 and 13, Interim Recommendation with Respect to Grievance 11 and Discovery Rulings (July 13, 2016); Fund Management's acceptance of Grievance Committee's recommendations (September 9, 2016)

91. Following consideration of additional submissions of the parties, on July 13, 2016, the Grievance Committee issued a further decision and recommendation. (Grievance Committee's Jurisdictional Decision with respect to Grievances 1-8, Final Recommendation with respect to Grievances 9, 10 and 13, Interim Recommendation with Respect to Grievance 11 and Discovery Rulings (July 13, 2016).)

92. As to Grievances 1-8, the Grievance Committee concluded that the "Fund has explicitly adopted a no-fault worker compensation system that is intended to supplant claims that Fund negligence has caused workplace illnesses or injuries. As a result, claims alleging a negligent failure of the duty of care in the workplace are preempted by the Fund's no-fault worker compensation regulations." (*Id.*, p. 8.) In so concluding, the Grievance Committee sought to distinguish the Tribunal's Judgment in *Mr. "DD", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2007-8 (November 16, 2007), which held that the workers' compensation policy did not preclude a claim alleging harassment in violation of the Fund's internal law:

> The Tribunal's decision was based on the fact of an independent Fund policy against harassment – a policy that recognized possible liability for non-intentional actions causing injury to a staff member. Although the Committee concludes that a safe workplace is a fundamental staff right and an obligation imposed on Management, it cannot read into that unwritten mandate a cause of action for negligence. Instead, the right to a safe workplace must be read in conjunction with the Fund's no-fault worker compensation regulations, which clearly express an intent to remove negligence as a cause of action in grievances alleging illness or injury resulting from the workplace. . . . The Committee believes that such an approach best comports with the Tribunal's *Mr. "DD"* decision and best harmonizes the worker compensation regulations with other Fund law (including the Fund's duty to provide a safe workplace).

(*Id.*, pp. 8-9.) Accordingly, the Grievance Committee concluded that it did not have jurisdiction over Grievances 1-8, which, it said, asserted claims of negligence. (*Id.*, p. 11.)

93. In a decision of September 9, 2016, Fund Management acknowledged the Grievance Committee's denial of jurisdiction over Grievances 1-8 and accepted its recommendations that Grievances 9 and 10 be dismissed, along with the recommendation that Grievance 13 be dismissed upon payment to Applicant of $8,715 for a subsistence allowance that Applicant claimed was due him for the period of his relocation following the injury. (Letter from Deputy Managing Director and Chief Administrative Officer to Applicant, September 9, 2016.)

(2) Grievance Committee's Final Decision and Recommendation (February 13, 2017); Fund Management's acceptance of Grievance Committee's recommendations (March 1, 2017)

94. In a Final Decision of February 13, 2017, the Grievance Committee reaffirmed its July 13, 2016, decisions and recommendations with respect to Grievances 1-10. (Grievance Committee's Final Decision and Recommendation, February 13, 2017, p. 3.)

95. As to Grievance 11 (workers' compensation), the Committee declined to address the question whether Applicant was entitled to retain his early retirement pension while receiving a workers' compensation annuity, concluding that the question falls exclusively within the jurisdiction of the SRP Administration Committee. (*Id.*, pp. 7-8.) The Grievance Committee additionally observed that it "continues to have questions about the conversion of a worker compensation annuity (payable out of Fund assets) to a disability pension (payable out of the assets of the SRP)" but that it lacked jurisdiction to decide a challenge to a decision of the SRP Administration Committee: "[T]o the extent there is an arguable conflict between the Grievance Committee and the [SRP] Administration Committee in this case, only the Administrative Tribunal can resolve the conflict." (*Id.*, p. 9.)

96. The Grievance Committee also observed that it "remains concerned with and has jurisdiction over the question whether Grievant is receiving the proper amount of money previously recommended by the Committee, consistent with the provisions of the Fund's worker compensation annuity rules." However, "[h]aving given Grievant extra time and discovery," the Grievance Committee decided that "[s]ince Grievant has chosen not to provide the requested additional information, his claims alleging underpayment of annuity benefits and improper taxation of benefits are rejected as not having been proved." (*Id.*, pp. 9-11.)

97. The Grievance Committee also recommended denial of Grievances 12 -15, on the ground that Applicant had failed to provide either supporting evidence or legal basis for them.

98. On March 1, 2017, Fund Management notified Applicant that it accepted the Grievance Committee's Final Decision and Recommendation. (Letter from Deputy Managing Director and Chief Administrative Officer to Applicant, March 1, 2017.)

F. Exhaustion of Administrative Review (2017)

99. Following notification that the administrative review processes had been exhausted, the Tribunal ordered Applicant to file a Revised Application that would take account of those developments. *Mr. "LL", Applicant v. International Monetary Fund, Respondent*

(Recommencement of the Proceedings), IMFAT Order No. 2017-1 (July 24, 2017). On September 14, 2017, Applicant filed his Revised Application with the Administrative Tribunal.

SUMMARY OF PARTIES' PRINCIPAL CONTENTIONS

A. Applicant's principal contentions

100. The principal arguments presented by Applicant in his Revised Application and Reply, and accompanying submissions of counsel, may be summarized as follows:

1. Applicant is entitled to both a vested early retirement pension, reflecting deferred past income, and a separate workers' compensation annuity, reflecting lost future earnings.

2. The SRP Administration Committee did not have authority to replace, retroactively, Applicant's early retirement pension with a disability pension at the unilateral request of the Fund.

3. Properly interpreted and applied, SRP Section 10.5 would operate to offset only the amount by which the disability pension exceeded the early retirement pension.

4. It is the Fund's exclusive obligation as employer to finance lost future earnings resulting from a work-related injury. Partial financing of the workers' compensation annuity by the SRP also conflicts with SRP provisions prohibiting diversion of Retirement Fund resources. The Board's 1992 decision (EBAP/92/146), on which the SRP Administration Committee relied in coordinating Applicant's benefits, conflicts with the SRP and was never incorporated in it.

5. Applicant's earlier pension commutation payment likewise cannot be used to reduce the Fund's exclusive responsibility to compensate for the work-related injury.

6. The Fund was not authorized by GAO No. 16 or the separation arrangements letter to recover the lump-sum Separation Benefits Fund (SBF) payment that Applicant received at the time of his separation for medical reasons. Workers' compensation is not comparable to a severance benefit and cannot be offset against it. Additionally, recovery of the SBF payment violates the Fund's two-year statute of limitations for recovery of undue payments.

7. The Fund breached a "duty of care" to take preventative measures to ensure Applicant's health and safety by falling short of applicable standards adopted by other international agencies. The Fund's workers' compensation policy does not provide the exclusive remedy for breach of a "duty of care" under international administrative law. This is especially so, given that the Fund

decided not to pay its workers' compensation obligations to him solely through Fund resources but rather in part by the SRP.

8. The Fund has wrongfully denied Applicant compensation for the disability of his spouse, resulting from the failure to take measures to protect his family's health and safety.

9. The Fund has wrongfully failed to reimburse Applicant for lost personal effects.

10. Applicant is entitled to reimbursement for the Fund's failure to afford him the maximum 24 months of "special sick leave" to support his recovery from the work-related injury before being separated from the Fund.

11. The Fund's errors in determining Applicant's benefits resulted in undue tax liabilities for which the Fund should compensate him.

12. Applicant is entitled to interest from the Fund on four years of back payments of his workers' compensation annuity.

13. Applicant is entitled to compensation for procedural irregularities, delays and confusion in the Fund's laws governing disability.

14. Applicant seeks as relief: (a) reinstatement of his early retirement pension; (b) reinstatement of his separate workers' compensation annuity; (c) that the workers' compensation annuity be financed solely by the IMF's administrative budget; (d) reimbursement of Applicant's early retirement pension commutation payment to the extent that it has been deducted from his "coordinated" annuity payments; (e) reimbursement of Applicant's repayment of the lump-sum SBF (i.e., medical separation) payment; (f) 3 years' gross salary as compensation for pain and suffering consequent to alleged breaches of the Fund's "duty of care" to ensure Applicant's health and safety; (g) 3 years' gross salary as compensation for injury to Applicant's spouse; (h) compensation for lost personal effects; (i) reimbursement for the maximum 24 months of "special sick leave" in connection with his work-related injury; (j) compensation for interest lost as a consequence of retroactive payments to him; (k) compensation for alleged tax consequences of the Fund's determination of payments due to Applicant stemming from his work-related injury; (l) 6 months' gross salary, plus all legal fees incurred since the commencement of proceedings in any forum, regardless of whether Applicant prevails on the merits of the Application, as compensation for procedural irregularities, delays, and failure to address confusion in the Fund's disability laws and for consequent mental and financial stress; and, in any event, (m) legal fees and costs, which the Tribunal may award, in accordance with Article XIV, Section 4 of the Statute, if it concludes that the Application is well-founded in whole or in part.

B. Respondent's principal contentions

101. The principal arguments presented by Respondent in its Answer and Rejoinder may be summarized as follows:

1. Applicant's "coordinated" disability pension and workers' compensation annuity, retroactive to the date of his retirement, represents the maximum benefit available under Fund law for total and permanent disability stemming from a work-related injury.

2. The SRP Administration Committee had both the authority to reconsider its earlier denial of a disability pension for Applicant and the obligation to grant a disability pension retroactively, in light of the facts of the case. Furthermore, the Committee properly concluded that once Applicant was awarded a disability pension his early retirement pension must cease.

3. The SRP Administration Committee reasonably determined that the commutation payment Applicant had elected under the early retirement pension should be treated as if it had been taken under the newly-awarded disability pension.

4. The SRP Administration Committee's decision to "coordinate" Applicant's disability pension and workers' compensation annuity—so that Applicant receives a sum equivalent to the larger of the two payments (i.e., the workers' compensation annuity), the annuity is partially financed by the SRP, and the amount is reduced by Applicant's commutation of his early retirement pension—was based on proper legal considerations and correct interpretations of Plan provisions, soundly applied to the facts of Applicant's case. The Committee properly relied on EBAP/92/146 in exercising its discretion to offset workers' compensation against pension benefits in "such equitable manner as the Administration Committee shall decide" as prescribed by SRP Section 10.5.

5. The Fund was entitled to recover the lump-sum Separation Benefits Fund (SBF) payment, paid to Applicant at the time of his medical separation, in light of the later determination of permanent and total disability.

6. Applicant is not entitled to relief for common law tort claims. Such claims are outside of the Tribunal's jurisdiction and, in any event, are moot as they represent an alternative theory for holding the Fund responsible for the same injury for which Applicant already has been fully compensated under the Fund's internal law.

7. Applicant's claim for compensation for medical costs and lost earnings on behalf of his spouse should be denied because the Fund does not have a program that would provide insurance coverage for disability suffered by Applicant's spouse in the circumstances of the case, beyond benefits that may already have been received under the Medical Benefits Plan or travel accident insurance.

8. Applicant has not provided evidence to support his claim for compensation for lost personal effects. Nor has he provided evidence that he sought or has been denied reimbursement through insurance policies maintained by the Fund. The listing of personal effects provided by Applicant in the Reply is "belated and arbitrary"; if relief is to be awarded, an alternate listing provided by the Fund should be considered more probative.

9. Applicant's claim relating to the use of "special sick leave" for his workers' compensation absences should be denied, as the sick leave and medical separation policies were properly applied in his case and he suffered no financial loss in relation to the category of sick leave used.

10. Applicant has not established any tax losses, nor any right to tax reimbursement by the Fund, in connection with his disability payments.

11. Applicant has not established a basis for his claim for interest payments in connection with the Fund's retroactive payments to him.

12. Delays and procedural complications in the case do not form a basis for further compensation to Applicant.

RELEVANT PROVISIONS OF THE FUND'S INTERNAL LAW

102. For ease of reference, the principal provisions of the Fund's internal law relevant to consideration of the Revised Application are set out below.[7]

A. GAO No. 13 (Leave Policies), Rev. 6 (September 29, 2006)

103. During the relevant period, GAO No. 13 (Leave Policies) governed leave policies, including workers' compensation leave ("special sick leave" under Section 4.08), the role of the Fund's Workers' Compensation Claims Administrator (Section 4.13), and the process for separation of staff members for medical reasons (Annex I):

> *Section 4. Sick Leave*
>
> 4.01 *General.* Sick leave is leave with pay to cover absences from work when staff members are temporarily incapacitated by sickness or injury, when they are undergoing necessary dental, medical, optical, or other examination or treatment, when their presence at the office would jeopardize the health of others, or in situations where the staff member's absence was necessitated by the need to care for any member of the staff

[7] The Tribunal's practice is to reproduce the relevant provisions of the Fund's internal law that governed the issues of the case. The Fund's internal law changes over time and the provisions reproduced herein are not necessarily those in force as of the time of this Judgment.

member's family or any member of his immediate household (family care leave).

4.01.1 In the case of illness or injury, the purpose of sick leave is to allow the staff member time to recover so that he will be able to return to duty. If, after an appropriate period and on the basis of medical advice, the Director, Human Resources, forms the opinion that the staff member will not be able to return to duty in the foreseeable future, the Director, Human Resources, shall initiate the procedures for separation specified in Annex I of this Order.

. . . .

4.02 *Categories of Sick Leave*. The categories listed hereunder describe the types of sick leave available to staff members in the circumstances appropriate to each of the categories.

(i) annual credit (Section 4.03)
(ii) family care leave (subsection 4.04)
(iii) extended sick leave at full pay (subsection 4.05.1)
(iv) extended sick leave at reduced pay (subsection 4.05.2)
(v) compulsory sick leave (Section 4.07)
(vi) special sick leave (Section 4.08)

. . . .

4.08 *Special Sick Leave.* In the case of an illness or injury which is covered under GAO No. 20 (Workers' Compensation Policy) sick leave will be accounted for under a separate category entitled "special sick leave." When the staff member is covered for the illness or injury under special sick leave, no other category of sick leave can be used subsequently for the same illness or injury to extend benefits after the maximum period provided below.

4.08.1 (i) The maximum period of special sick leave is equivalent to the staff member's entitlement for sick leave with full and reduced pay provided in Sections 4.03 and 4.06 above when such entitlement exceeds two years; or (ii) The maximum period of special sick leave is two years for a staff member whose entitlement for sick leave with full and reduced pay provided in Sections 4.03 and 4.06 above does not exceed two years.

4.08.2 Whether the staff member's entitlement for special sick leave is (i) or (ii) above, there shall be no salary reduction during the first two years in such leave status.

4.08.3 Subject to the provisions of this Section 4.08, the basic principles and procedures applicable to sick leave, in particular Sections (including subsections) 4.01, 4.09, 4.10, 4.11, and 4.12, shall apply to special sick leave as well. If the staff member is not able to return to duty after having been on special sick leave for the maximum period, the provisions of Annex I of this Order (Separation for Medical Disability) shall apply, unless he is placed on administrative leave without pay in accordance with Section 9 below.

. . . .

4.13 *Role of the Fund's Workers' Compensation Claims Administrator*. Under the provisions of GAO No. 20 (Workers' Compensation Policy), and taking into account the information provided by the treating physician, the Fund's Workers' Compensation Claims Administrator will advise the Human Resources Department regarding the staff member's fitness for duty, including any necessary limitations on his activities.

ANNEX I – SEPARATION FOR MEDICAL REASONS

. . . .

Section 2. Separation at the Fund's Initiative

2.01 *Grounds for Separation*

2.01.1 *Staff Member in Sick Leave Status.* As indicated in Section 4.01 of this Order, further sick leave shall not be granted to a staff member in sick leave status if, on the basis of medical advice, the Director, Human Resources, has formed the opinion that the staff member will not be able to return to duty in the foreseeable future. The Director, Human Resources, shall then initiate the procedures outlined in Section 2.02 below.

. . .

2.02 *Procedures*

2.02.1 When the Director, Human Resources, has reached the opinion that a staff member should be separated for

medical reasons, he shall communicate this opinion to the staff member in writing, stating the reasons for his opinion and specifying the last date by which any objection on the part of the staff member must be received by the Fund.

2.02.2 If the staff member has not notified the Director, Human Resources, of his objection to the proposed separation by the date specified in the communication, the procedures described in GAO No. 16 (Separation of Staff Members) shall be followed. In the case of participants in the Staff Retirement Plan, this will include determination of eligibility for a disability pension.

2.02.3 If the staff member notifies the Director, Human Resources, in writing of his objection to the proposed separation before the date specified in the communication, a further medical opinion shall be sought from a panel of experts constituted in accordance with Section 2.03 below.

. . . .

B. GAO No. 16 (Separation of Staff Members), Rev. 6 (February 28, 2008)

104. During the relevant period, GAO No. 16 (Separation of Staff Members), Rev. 6 (February 28, 2008), governed separation of staff members, including payments under the Separation Benefits Fund (Sections 4.06 - 4.08) and separation for medical reasons (Section 10):

Section 4. *General Provisions and Procedures*

. . . .

4.06 *Payments under the Separation Benefits Fund.* Whenever, under this Order, a staff member is entitled to a payment under the Separation Benefits Fund (separation for medical reasons without access to a disability pension, abolition of position, reduction in strength, or redesign of position), the payment shall be as follows:

A. For regular staff members with 4.8 years of service or more, an amount equivalent to 1¼ months of salary for each year of service, subject to a maximum that is the smallest of the following:

(i) the equivalent of 22½ months of salary;

(ii) the amount of salary that would otherwise have been payable to the staff member between the last day on active duty and his or her mandatory retirement age of 65; or

(iii) the amount of salary that would otherwise have been payable to the staff member between the last day on active duty and the date that is 12 months after the staff member reaches eligibility for an unreduced early retirement pension under Section 4.2(b) (ii) of the Staff Retirement Plan (SRP) (Rule of 85). For staff who have already met the Rule of 85, the amount shall be the equivalent of 12 months of salary.

. . . .

4.08 *Separation Leave With Pay In Lieu of Separation Payment.* As an alternative to a separation payment, the staff member may request that the amount of the payment, or a portion thereof, be converted to an equivalent period of separation leave with pay. The request shall be granted unless the Director of Human Resources concludes that there is a specific reason in the interest of the Fund for refusing it. Separation leave shall be considered as contributory service for the Staff Retirement Plan, and a staff member on such leave may elect to continue being covered by the Fund's Medical Benefits Plan and Group Life Insurance, subject to the provisions of those programs. For all other benefit purposes, the staff member shall normally be deemed to have separated from the Fund on the last day of active service. The staff member may during the period of separation leave, if applicable, utilize earned, but unused home leave under the home leave policy.

. . . .

Section 10. *Separation for Medical Reasons*

10.0l *General*. The provisions governing temporary incapacity are contained in Section 4 of General Administrative Order No. 13, Rev. 6 (Leave Policies). In case of permanent incapacity, when a determination has been made in accordance with the provisions of Annex I to General Administrative Order No. 13 that a staff member shall be separated for medical reasons, the procedures outlined below shall apply.

10.02 *Effective Date.* The separation of a staff member for medical reasons who is a participant in the Staff Retirement Plan shall not be implemented until it has been determined, in

accordance with the relevant provisions of the Staff Retirement Plan, that the staff member will receive a disability pension. The following effective dates shall apply:

10.02.1 *Staff Members Eligible for a Disability Pension*. When a staff member is eligible for a disability pension under the Staff Retirement Plan, the date of separation shall be set one calendar day prior to the date of commencement of the disability pension. The commencement of the pension is determined in accordance with the provisions of the Plan.

10.02.2 *Staff Members Ineligible for a Disability Pension.* When the staff member is not a participant in the Staff Retirement Plan or when it is determined that no disability pension is payable to him under the Plan, the effective date of separation shall be determined by the Director of Human Resources. The staff member shall be entitled to a minimum of 60 calendar days notice.

. . . .

10.04 *Payments from Separation Benefits Fund.* When a staff member who is separated for medical reasons does not receive a disability pension under the Staff Retirement Plan, he will be granted a separation payment from the Separation Benefits Fund in accordance with the provisions of Section 4.06.

C. GAO No. 20 (Workers' Compensation Policy), Rev. 3 (November 1, 1982)

105. During the relevant period, GAO No. 20 (Workers' Compensation Policy), Rev. 3 (November 1, 1982), governed workers' compensation benefits, providing in pertinent part:

Section 1. Purpose

1.01 This Order sets forth of the terms of the Fund's Workers' Compensation policy which provides staff members with benefits and compensation in the event of illness, accidental injury or death arising out of, and in the course of, their employment.

Section 2. Definitions

2.01 When used in this Order

2.01.1 *"Staff member"* means any person employed by the Fund on a regular, fixed-term, temporary, consultant, or technical assistance expert appointment. It includes the Managing Director, Executive Directors, Alternate Executive Directors,

Advisors and Assistants to Executive Directors, but does not include IMF Institute participants.

2.01.2 *"Final net remuneration"* means the annual rate of salary, net-of-tax, excluding allowances for taxes, overtime payments and any other special pay, which was being paid to a staff member at the time of the illness, injury or death.

2.01.3 *"Final pensionable remuneration"* means the annual rate of gross remuneration. The annual rate of gross remuneration is computed from the annual rate of net remuneration being paid at the time of the illness, injury or death, in accordance with Schedule A of the Fund's Staff Retirement Plan.

2.01.4 *"Coverage"* within the meaning of the policy is restricted to accidental injury or death arising out of, and in the course of, Fund employment, and such occupational disease or infection as arises naturally out of such employment or as naturally or unavoidably results from such accidental injury. Illness, injury or death occasioned during the course of commuting to and from work, during leaves of absence, vacations, and other absences from work shall not be deemed to be attributable to Fund employment.

2.01.5 *"Claim Administrator"* means the company which has been engaged to administer the provisions of this Order.

Section 3. Eligibility

3.01 The Fund's Workers' Compensation policy provides benefits to staff members, irrespective of their location at the time of service-connected injury or death, subject to the exclusions set out in subsection 2.01.4 above.

Section 4. Compensation for Death

. . .

Section 5. Compensation for Disability

5.01 In the event of an illness or injury of a staff member arising out of, and in the course of, Fund employment the following provisions shall apply:

5.01.1 *Permanent Total Disability*. In the case of permanent total disability the staff member shall receive an annuity

equivalent to 66–2/3 percent of his final pensionable remuneration. Such payment shall commence immediately upon the date of his separation from the Fund and continue for the duration of such total disability. Permanent total disability shall be determined by the Claim Administrator in accordance with the procedure for determining such disability under the Fund's Staff Retirement Plan.

5.01.2 *Permanent Partial Disability.* In the case of injury or illness resulting in permanent loss of a member or function, the staff member shall be paid a lump sum determined in accordance with the Schedule and the principles set forth in the Annex to this Order. The schedule of payments shall be adjusted annually for cost-of-living increases as described in subsection 7.02 below.

Section 6. Coordination of Workers' Compensation Benefits with the Fund's Other Benefit Plans

6.01 *Annual Compensation Payments.* Any entitlement to compensation under subsections 4.02, 4.03, 4.04, and 5.01.1 shall be reduced by the amount of all non-lump sum benefits paid (or which would have been paid had there existed surviving spouse's coverage under Section 4.9 of the Staff Retirement Plan) under the Fund's Staff Retirement Plan for the same illness, injury or death. For technical assistance experts and other persons on fixed-term appointments of two years or more, who are not participating in the Staff Retirement Plan, but on whose behalf the Fund contributes to other retirement plans or annuities, any entitlement to compensation under subsections 4.02, 4.03, 4.04 and 5.01.1 shall be reduced by the amounts that would have been payable had the person been a participant in the Staff Retirement Plan from his date of appointment.

6.01.1 *Minimum Annual Compensation Payments.* Notwithstanding any other provisions of this Order, the annual compensation payable in the event of death to the eligible surviving spouse and/or child(ren) or in the event of permanent total disability shall not be less than 5 percent of the staff member's final pensionable remuneration irrespective of the amounts payable under other Fund benefit plans.

6.02 *Lump Sum Compensation Payments*. Lump sum payments under subsections 4.02 and 4.06 will be reduced by the amount of any lump sum payments made under the Fund's Staff Retirement Plan, Group Life Insurance Plan, Travel Accident

Insurance Plan and by the lump sum grant in the event of death and the separation grant. Lump sum payments under subsection 5.01.2 shall be reduced by the amount of compensation payable for same loss of a member or function under other Fund policies.

Section 7. Adjustment of Compensation for Cost-of-Living Increases

7.01 *Adjustment of Annuities.* Any annuity payable under this Order shall be adjusted for cost-of-living increases on May 1 following the first payment, and on each subsequent May 1, by the same percentage that pensions under the Staff Retirement Plan are increased in accordance with Section 4.11 of the Plan.

. . . .

7.03 *Basis of Compensation Adjustments.* For the purpose of calculating the adjustments described in subsections 7.01 and 7.02 above, an increase in the cost-of-living for a financial year shall be measured using the Washington, D.C. Consumer Price Index for All Urban Consumers, as described in Section 4.11 of the Staff Retirement Plan.

Section 8. Medical Expenses

8.01 In the event of an illness, accidental injury or death of a staff member arising out of, and in the course of, Fund employment, the Fund shall pay all reasonable medical, hospital and directly related costs.

Section 9. Report of Injury or Illness

9.01 *Staff Members at Headquarters.* If Washington, D.C. is the staff member's duty station, he should follow the procedure described below if he suffers a service-related accident or illness.

9.01.1 *Report to the Health Room.* No matter how minor, injuries arising out of, and in the course of, employment with the Fund must be immediately reported to the Health Room where arrangements will be made for first aid treatment and additional medical care if needed. The nurse in the Health Room shall immediately report the accident to the Staff Benefits Division of the Administrative Department.

9.01.2 *Report to the Staff Benefits Division*. If, in the judgment of the staff member, or his attending physician, an

illness or injury is in any way the consequence of, or aggravated by, the staff member's employment, even though this connection was not immediately apparent or even though no medical expenses have been incurred, it shall be the staff member's responsibility to inform the Staff Benefits Division, in writing, without delay. If he has been absent from duty because of a service-connected injury or illness, he shall notify the Staff Benefits Division upon his return to work, or not later than 30 days after the occurrence of the accident or illness, whichever is earlier or applicable.

9.02 *Staff Members Outside Washington.* If a staff member shall suffer a service connected accident or illness while resident at a duty station other than Washington, or on official mission, the staff member is required to send a written report to the Staff Benefits Division not later than 30 days after the occurrence of the accident or illness, or upon return to work, whichever is earlier or applicable. This report shall contain a detailed statement of the circumstances involved and shall be submitted even where medical expenses have not been incurred.

9.03 *Submission of Claim for Disposition.* For the purpose of claim disposition the staff member shall submit a certified statement by the attending physician with details as to the nature of the accident or illness, diagnosis and treatment. Bills and receipts for medical expenses related to the accident or illness will be required if reimbursement is claimed.

Section 10. Disposition of Claims

10.01 *Procedure for the Disposition of Claims.* The Staff Benefits Division is responsible for assisting staff in filing claims with the Claim Administrator who handles claims on behalf of the Fund. Claims will be forwarded by the Staff Benefits Division to the Claim Administrator for disposition. The Claim Administrator will dispose of claims first on the basis of the provisions of this Order and next, when not specified otherwise in this Order, in accordance with established procedures for disposition of claims under the District of Columbia Workers' Compensation Regulations. If the Administrator finds liability under the provisions of this Order, the claims will be paid in accordance with subsection 10.03 below. If the Administrator finds no liability, the staff member will be so informed by the Staff Benefits Division.

10.02 *Right of Appeal.* A staff member may appeal the Claim Administrator's finding to the Grievance Committee under the procedures set forth in subsection 4.01 of General

Administrative Order No. 31, Rev. 1. The normal procedures of the Grievance Committee shall apply.

10.03 *Channel of Payments.* Normally, payments by the Administrator on an approved claim shall be made to the staff member through the Fund. Payments for professional medical services are made to the physician or the hospital concerned or, if appropriate, reimbursed to the staff member.

10.04 *Choice of Currency and Determination of Exchange Rate.* The provisions of the Staff Retirement Plan of the Fund relating to payments in a currency other than the U.S. dollar and the determination of the exchange rate between the two currencies shall apply to payments under this Order.

. . . .

D. Staff Retirement Plan (May 11, 2011)

106. The following provisions of the Staff Retirement Plan, which governed during the relevant period, are pertinent to the consideration of the issues of the case:

(1) SRP Section 4.2 (Early Retirement)

107. SRP Section 4.2 provides for early retirement pensions:

4.2 Early Retirement

(a) A participant who has reached the age of 55, shall, upon ceasing to be a participant before his normal retirement date for any cause other than death or disability retirement under the Plan, be retired under the Plan on an early retirement pension unless, in accordance with Section 4.5(c), he shall have surrendered all his rights in and to such pension and any other benefits that might become payable to him or on his account under the Plan. The early retirement pension, at the option of the participant, shall be:

(i) a pension becoming effective on the first day of the calendar month next following the date he ceases to be a participant, or on such date if it shall be the first day of a calendar month; or

(ii) a deferred pension becoming effective on the first day of any month after his retirement but before his normal retirement date; or

(iii) a deferred pension to become effective on his normal retirement date and computed in the same manner as a normal pension on the basis of his highest average

remuneration and eligible service at the time of his early retirement, provided, however, that unless and until he shall otherwise elect by written notice filed with the Administration Committee, his early retirement pension shall be a deferred pension to become effective on his normal retirement date.

(b) Any such early retirement pension becoming effective before his normal retirement date shall be the larger of:

(i) an amount equal to the deferred pension that would otherwise become effective on his normal retirement date, decreased by 1/4 of 1 percent of such deferred pension for each month between the date his pension becomes effective and his normal retirement date; or

(ii) an amount equal to the deferred pension that would otherwise become effective on his normal retirement date, decreased by 1/8 of 1 percent of such deferred pension for each full month remaining after subtracting from 1,020 months the sum of the participant's age in full months on the date his pension becomes effective and his eligible service in months.

(c) A participant or retired participant who has (i) reached at least the age of 50 years, (ii) whose age in full months plus eligible service in months equals 900 or more, and (iii) who, by written notice filed with the Administration Committee, has elected to receive a reduced early retirement pension, shall, upon ceasing to be a participant before his normal retirement date for any cause other than death or disability retirement under the Plan, be retired under the Plan on a reduced early retirement pension that shall be equal to the deferred pension that would otherwise be payable at age 55 under the provisions of subsection (b) of this Section 4.2, reduced by 5/12 of 1 percent for each month between the effective date of the pension and the earliest date that a pension could become effective under Section 4.2(a)(i). The reduced pension shall become effective (i) on the first day of the calendar month next following the date he ceases to be a participant (or on such date if it shall be the first day of a calendar month) or (ii) on the date of such election if later.

(d) A person shall be retired on a reduced early retirement pension if he (i) has ceased to be a participant on or after April 1, 2008 before his normal retirement date except by reason of death or disability retirement under the Plan; (ii) has reached the age of 50 years, (iii) has three or more years of

eligible service or is age 55 or older, (iv) has not received a payment from the Employer's Separation Benefits Fund and has waived any right that may exist thereto, and (v) by written notice filed with the Administration Committee, has elected to receive an early retirement pension as provided under this Section 4.2(d). The reduced early retirement pension under this Section 4.2(d) shall be effective on the first day of the month specified by the participant, and shall be the larger of:

(i) an amount equal to the deferred pension that would otherwise become effective on his normal retirement date, decreased by 1/8 of 1 percent of such deferred pension for each full month between the date his pension becomes effective and his normal retirement date; or

(ii) an amount determined under Section 4.2(b)(ii).

No participant shall be entitled to or otherwise accrue a right to the early retirement pension under this Section 4.2(d) prior to the later of the day on which participation ceases or the day on which a participant is both eligible for and elects to receive this benefit. The early retirement pension under this Section 4.2(d) shall be in lieu of any other pension provided under the Plan.

(e) Pensions payable in accordance with this Section 4.2 shall be subject to the provisions of Section 4.12.

(2) SRP Section 4.3 (Disability Retirement)

108. SRP Section 4.3 provides for disability pensions:

4.3 Disability Retirement

(a) A participant in contributory service shall be retired on a disability pension before his normal retirement date on the first day of a calendar month not less than 30 nor more than 120 days immediately following receipt by the Administration Committee of written application therefore by the participant or the Employer; on the condition that the Pension Committee must find, on the recommendation of the Administration Committee and the certification of a physician or physicians designated by the Administration Committee, that:

(i) such participant, while in contributory service, became totally incapacitated, mentally or physically, for the performance of any duty with the Employer that he might reasonably be called upon to perform;

(ii) such incapacity is likely to be permanent; and

(iii) such participant should be retired.

(b) A disability pension shall become effective upon retirement and shall be equal to the normal pension that would be payable to the participant if his normal retirement date had fallen on the date of his disability retirement, but using for such computation his highest average remuneration and eligible service at the time of his disability retirement. In no event, however, shall such pension be less than the smaller of:

(i) 50 percent of such highest average gross remuneration; or

(ii) the normal pension that the participant would have received if he had remained a participant until his normal retirement date without change in such highest average remuneration.

(c) The Administration Committee may require a retired participant who is receiving a disability pension and who has not reached his normal retirement date to be medically examined from time to time, not more often than once a year, by a physician or physicians designated by the Administration Committee. Such examination shall be made at the home of such retired participant, unless some other place shall be agreed upon by him and the Administration Committee. If such a retired participant shall fail to permit such an examination to be made, his disability pension may be discontinued by the Administration Committee until he shall permit such examination to be made and, in the discretion of the Administration Committee, if he shall fail to permit such examination to be made within a period of one year from the mailing or other sending to him, at his address as it appears on the records of the Administration Committee, of request therefore by the Administration Committee, his incapacity may be deemed to have wholly ceased, and he may be deemed to have withdrawn from the Plan as of the date when his disability pension was discontinued, with the eligible service accrued to the date of his disability retirement.

(d) If the Administration Committee shall find, as a result of a medical examination or on the basis of other satisfactory evidence, that the incapacity of a retired participant (who has not reached his normal retirement date), on account of which he is receiving a disability pension, has wholly ceased or that he has regained the earning capacity which he had before such incapacity, his disability pension shall cease, and if the Committee shall find that such incapacity has partly ceased for the performance of any work which he might reasonably be required to do, and that his earning capacity (in any such work) has been

partially regained, his disability pension shall be reduced by the Administration Committee in a reasonable amount. If the disability pension is so discontinued or reduced and the retired participant shall again become incapacitated exclusively through and because of the same incapacity, his disability pension shall be restored upon the same conditions that applied to the original pension and the granting thereof, subject, however, to the provisions of subsection (e) of this Section 4.3.

(e) If a disability pension is discontinued pursuant to subsection (c) or (d) of this Section 4.3 and shall not be restored pursuant to subsection (d) of this Section 4.3 within a period of five years from such discontinuance, and if such retired participant shall not within such period again become a participant, he shall be deemed to have withdrawn from the Plan as of the date his disability pension was discontinued, with the eligible service accrued to the date of his disability retirement, and he shall be entitled to the benefits provided in Section 4.2 or Section 4.5(a), (b) or (c), whichever is applicable.

(f) For purposes of this Section 4.3, normal retirement date shall mean the first day of the calendar month next following the sixty-fifth anniversary of his date of birth, or the date of such anniversary if it shall fall on the first day of a calendar month.

(3) SRP Section 4.11 (Pension Supplements)

109. SRP Section 4.11 governs cost-of-living increases under the Plan:

(a) Whenever the cost of living for a fiscal year beginning after April 30, 1977 increases, pensions shall be augmented by a pension supplement that, expressed in percentage terms, shall be equal to the increase in the cost of living for the fiscal year.

. . . .

(d) For the purpose of subsections (a) and (b) above, an increase in the cost of living for the fiscal year shall be measured on the basis of either: (i) the most recent U.S. Consumer Price Index for All Urban Consumers, either published or certified to be selected for publication by the U.S. Bureau of Labor Statistics; or, if applicable, (ii) the most recent consumer price index for a country either (1) published or certified to be selected for publication in *International Financial Statistics* or (2) in the absence of (1), another index determined to be suitable. The determination of which index under (ii) applies to an election made

in accordance with Section 16.3 shall be made by the Administration Committee.

. . . .

(4) SRP Section 7.1 (Pension Committee)

110. SRP Section 7.1 governs the responsibilities of the Pension Committee:

7.1 Pension Committee

(a) The overall responsibility for carrying out the provisions of the Plan shall be in a Pension Committee composed of seven members, each with an alternate. The members of the Committee shall be the Managing Director of the Employer, ex officio, four Executive Directors elected biennially by the Executive Directors, one staff member appointed by the Managing Director and one staff member elected biennially by the participants. The Deputy Managing Director shall be the Alternate of the Managing Director, the Alternate of each Executive Director shall be his alternate in accordance with Section 7.4(g), the Managing Director shall appoint the alternate of the staff member appointed by him, and the alternate of the elected staff member shall be elected by the participants. In the event that both the elected staff member on the Pension Committee and his elected alternate are unable to attend a meeting of the Committee, the Managing Director shall, upon appropriate consultation, appoint a temporary alternate to act and vote in their stead. If the office of the elected staff member becomes vacant, his alternate shall fill the vacancy for the remainder of the term. If the office of the alternate to the elected staff member becomes vacant, a new alternate shall be appointed for the remainder of the term by the elected staff member or his successor, as the case may be. The Executive Directors and the elected staff member to serve on the Pension Committee during the first year shall be elected in accordance with arrangements to be made by the Managing Director of the Employer. Subsequent elections of Executive Directors and staff members shall be held in accordance with rules established by the Pension Committee. The staff member and alternate appointed by the Managing Director shall serve at his pleasure. The Managing Director shall be Chairman of the Pension Committee, and in his absence his alternate shall be the acting chairman.

(b) The Pension Committee shall appoint, in the manner provided in Sections 7.2 and 7.3, an Administration Committee

and an Investment Committee, and such additional committees as it may deem necessary or appropriate, and shall define their powers and duties, not inconsistent herewith.

(c) The Pension Committee shall decide all matters of a general policy nature arising under the Plan, and all other matters, including any interpretation of the provisions of the Plan, required to be decided by it under the provisions of the Plan or submitted to it by any Committee appointed by it.

(d) The Pension Committee shall have authority to make and establish such rules, policies, and procedures for the overall administration and functioning of the Plan, and the collection, investment, management, safekeeping and disbursement of the Retirement Fund as shall not be contrary to the provisions hereof. All such rules, policies, and procedures shall be binding upon the Employer, participants, retired participants and all other persons having any interest in the Plan or the Retirement Fund, subject to appeal in accordance with the procedures of the Administrative Tribunal.

(e) The Pension Committee may secure the services of an actuary, whose compensation shall be paid by the Employer, and may rely upon his recommendations in all matters decided by it which are of an actuarial nature.

(f) The Pension Committee shall make periodic valuations of the fixed and contingent assets and liabilities of the Plan not less often than once every three years, and shall from time to time review the costs and benefits of the Plan and recommend to the Employer any changes in the contributions and benefits provided for therein that they shall deem desirable. The Pension Committee shall determine, from time to time, upon recommendation of the actuary, the actuarial assumptions and methods used in these valuations.

(5) SRP Section 7.2 (Administration Committee)

111. SRP Section 7.2 governs the responsibilities of the SRP Administration Committee:

7.2 **Administration Committee**

(a) The Administration Committee shall be composed of five persons, each with an alternate, appointed by the Pension Committee upon nomination by the Managing Director of the Employer, to serve at the pleasure of the Pension Committee.

Each member and each alternate appointed after January 1, 1978 shall serve for a period of three years, subject to the pleasure of the Pension Committee, but may be reappointed. The Pension Committee shall designate one of the members of the Administration Committee as chairman and another as vice chairman of the Administration Committee. The alternate of any member of the Administration Committee may act and vote in his stead.

(b) The Administration Committee, subject to the supervision and control of the Pension Committee, shall be responsible for the administration of the Plan and its application to participants, former participants and persons claiming through them. Except as may be herein otherwise expressly provided, the Administration Committee shall have the exclusive right to interpret the Plan, to determine whether any person is or was a staff member, participant or retired participant, to direct the employer to make disbursements from the Retirement Fund in payment of benefits under the Plan, to determine whether any person has a right to any benefit hereunder and, if so, the amount thereof, and to determine any question arising hereunder in connection with the administration of the Plan or its application to any person claiming any rights or benefits hereunder, and its decision or action in respect thereof shall be conclusive and binding upon all persons interested, subject to appeal in accordance with the procedures of the Administrative Tribunal. Nothing herein shall prevent the Administration Committee, at its own discretion, from reconsidering a decision taken or from submitting a matter to the Pension Committee in accordance with subsection (c) of Section 7.1.

(c) The Administration Committee, subject to the general authority of the Pension Committee, shall have authority to make, establish and prescribe such rules, policies, procedures and forms for the administration of the Plan, its interpretation, the exercise by individuals of rights or privileges hereunder, the disbursement of the Retirement Fund and the application of the Plan to individuals and the Employer as shall not be contrary to the provisions hereof.

(d) The Administration Committee shall maintain accounts showing the fiscal transactions of the Plan, and shall keep in convenient form such data as may be necessary for actuarial valuations of the Plan. The Administration Committee shall prepare annually a report showing in reasonable detail the assets and liabilities of the Plan and giving a brief account of the

> operation of the Plan for the past year. Such report shall be submitted to the Pension Committee, and a copy shall be on file at the headquarters of the Employer, where it shall be open to inspection by any participant or retired participant.
>
> (e) In any case where it shall be necessary to determine the part of any benefit under the Plan that is provided by the contributions of a participant or of the Employer, the Administration Committee, subject to any rules or orders of the Pension Committee with respect thereto, shall make such determination in such manner as it shall deem equitable.

(6) SRP Section 9.1

112. SRP Section 9.1 governs the Retirement Fund and places restrictions on its use as follows:

> 9.1 All the contributions made by the Employer and by participants pursuant to Article 6 hereof, and all other assets, funds and income of the Plan, shall be transferred to and become the property of the Employer, and shall be held and administered by the Employer, separately from its other property and assets, as the Retirement Fund, solely for use in providing the benefits and paying the expenses of the Plan, and no part of the corpus or income of the Retirement Fund shall be used for, or diverted to, purposes other than for the exclusive benefit of participants and retired participants or their beneficiaries under the Plan, prior to the satisfaction of all liabilities with respect to such participants, retired participants and beneficiaries. No person shall have any interest in or right to any part of the Retirement Fund or of the earnings thereof or any rights in, or to, or under the Plan, or any part of the assets thereof, except as and to the extent expressly provided in the Plan.

(7) SRP Section 10.5

113. SRP Section 10.5 grants the SRP Administration Committee authority to offset workers' compensation payments against "such part" of a disability pension "in such equitable manner as the Administration Committee shall decide":

> 10.5 Any amounts which may be paid or payable to any participant or to his dependents or otherwise on his account, as the result of premiums, taxes or contributions paid by the Employer under any Workmen's Compensation Law or plan, or under any workman's compensation or employer's liability policy, or under any other plan, whether self-insured or otherwise, on account of his death or of any incapacity for which he shall have been retired

> hereunder, may be offset against and payable, or deemed to be payable, in lieu of such part of his disability pension provided hereunder, in such equitable manner as the Administration Committee shall decide.

(8) SRP Section 15.1

114. SRP Section 15.1(a) provides that a participant may elect to commute up to one third of a normal, early retirement or deferred pension into a lump-sum payment; SRP Section 15.1(b) provides for election of a commutation payment in the case of a disability pension (in an amount up to one third of the early retirement pension that the participant would have been entitled to receive had he not retired on a disability pension) if the disability pension becomes effective at or after the participant reaches 55 years of age:

> (a) Any participant or retired participant entitled to receive a normal, early retirement or deferred pension may, by notice in writing filed with the Administration Committee before his pension becomes effective, elect to commute a stated portion, not exceeding one third, of his pension plus accumulated pension supplements into a lump sum payment.
>
> (b) Any participant or retired participant entitled to receive a disability pension effective at or after 55 years of age may, by notice filed in writing with the Administration Committee before his pension becomes effective and subject to the approval of the Administration Committee, elect to commute a stated portion, not exceeding one third, of the early retirement pension plus accumulated pension supplements he would have been entitled to receive if he had been retired on an early retirement pension instead of a disability pension, into a lump sum payment.
>
> (c) Any election under subsection (a) or (b) above shall be irrevocable, provided that the election shall be deemed not to have been made if the participant dies before the effective date of his pension.
>
> . . . .

(9) SRP Section 13.2

115. SRP Section 13.2 provides:

> All benefits and payments under the Plan shall be paid only from the Retirement Fund.

E. SRP Administration Committee Rules of Procedure (Rule VIII)

116. The SRP Administration Committee has adopted Rules of Procedure, which provide as follows for the Committee's review of its decisions:

RULE VIII
Review of Decisions

1. A Requester, or any other person claiming any rights or benefits under the Plan, who wishes to dispute a Decision may submit an Application for Review of a Decision (hereinafter "Application") to the Secretary within ninety (90) days after the Requestor receives a copy of the Decision. An Application shall satisfy all of the requirements as to form set forth in Rule III and otherwise applicable to a Request. Subject to Rule X, paragraph 2, if no Application has been submitted within this period and an extension of time described in Rule IX, paragraph 2 has not been granted, the right to submit an Application shall cease.

2. The Committee may review a Decision, either in response to a timely Application or at its own initiative. The Committee may also be required to review a decision at the request of the Pension Committee in accordance with the jurisdiction of that Committee as set out in Section 7.1 (c) of the Plan. The Committee shall not, however, review a Decision so as to affect adversely any action taken or recommended therein, except in cases of:

    a. misrepresentation of a material fact;
    b. the availability of material evidence not previously before the Committee; or
    c. a disputed claim between two or more persons claiming any rights or benefits under the Plan.

3. If the Committee undertakes to review a Decision, or if it declines to review a Decision, all parties to the Decision shall be notified in writing.

4. Any review of a Decision shall be conducted in accordance with Rules IV, VI and VII. The Committee shall notify the Applicant of the results of its review within three months of the receipt of the Application by the Secretary.

CONSIDERATION OF THE ISSUES

117. The Revised Application presents a series of issues for consideration, notably those raised by challenges to decisions of the SRP Administration Committee and of Fund Management.

A. Applicant's challenges to decisions of the SRP Administration Committee

118. The essence of the dispute between the parties in relation to the decisions of the SRP Administration Committee is whether SRP Section 10.5, or any other provision of the Fund's internal law, prevents Applicant from receiving a workers' compensation annuity (fully financed by the IMF) on the basis of having sustained a work-related injury deemed a "permanent total disability" under the Fund's workers' compensation policy (GAO No. 20), and simultaneously receiving a separate early retirement pension (SRP Section 4.2) under the Staff Retirement Plan. Respondent maintains, to the contrary, that Applicant must be granted a disability pension (SRP Section 4.3) in lieu of the early retirement pension, and, further, that the disability pension must be "coordinated" with the workers' compensation annuity to provide a single annuity, capped at the amount of the workers' compensation annuity, financed in part by the SRP, and reduced by the commutation payment Applicant previously had taken on his early retirement pension.

(1) What standard of review governs Applicant's challenges to decisions of the SRP Administration Committee?

119. The Tribunal has consistently held that when it considers a challenge to a decision of the SRP Administration Committee, it decides "whether the Committee has correctly interpreted the relevant Plan provisions and soundly applied them to the facts of the case." *Mr. "MM", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2017-1 (November 15, 2017), para. 55; *Ms. "J", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2003-1 (September 30, 2003), para. 128.[8] If the Tribunal concludes that the Committee's decision was "in error," it may rescind the decision and correct its effects.[9]

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[8] In *Ms. "J"*, para. 128, the Tribunal also formulated as part of the standard of review the questions whether the Committee's decision was taken in accordance with fair and reasonable procedures and whether it was arbitrary, capricious, discriminatory or improperly motivated. Those questions are considered in cases in which an applicant raises such issues as part of the challenge to the Committee's decision.

[9] *See Mr. "P" (No. 2), Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2001-2 (November 20, 2001), para. 145 and Decision (rescinding Committee's decision to escrow disputed portion of pension payments; directing that court order for division of marital property be given effect pursuant to SRP Section 11.3); *Ms. "J"*, para. 179 and Decision (rescinding Committee's decision denying disability pension and ordering that disability pension be granted under SRP Section 4.3); *Ms. "K", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2003-2 (September 30, 2003), para. 116 and Decision (same); *Mr. J. Prader, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2016-1 (March 15, 2016), para. 78 and Decision (concluding that Committee's decision denying request to revoke currency election under SRP Section 16.3 was "in error and must be rescinded" and ordering payment of pension in terms earlier requested by Applicant).

120. This standard of review differs from that applied when the Tribunal is presented with a challenge to a discretionary decision taken in the management of the staff of the Fund.[10] There are two reasons for this difference. First, SRP Section 7.2(b) vests the SRP Administration Committee with exclusive authority to take an individual decision under the Plan, subject to appeal to the Tribunal (following exhaustion of review by the Committee). Accordingly, unlike recommendations of the Fund's Grievance Committee, decisions of the SRP Administration Committee are not subject to later consideration by Fund Management. Second, the process of construing the applicable terms of the SRP and applying them to the facts of a particular case ". . . more closely resembles a judicial act than one typically taken pursuant to managerial authority." *Ms. "J"*, paras. 112-113. The Tribunal has recognized the "unique nature of [its] appellate authority" in cases arising under the SRP. *Ms. "J"*, para. 114, citing *Mr. "P" (No. 2)*, para. 141.

121. The Tribunal will consider whether the SRP Administration Committee correctly interpreted the provisions of the Plan and soundly applied them to the facts of the case when it decided in 2016: (i) to reconsider and reverse its 2011 decision denying Applicant a disability pension, and to grant a disability pension retroactive to and in lieu of the early retirement pension on which Applicant had retired in 2012; and (ii) to pay Applicant a "coordinated" disability pension and workers' compensation annuity, which is (a) capped at the amount payable to him as a workers' compensation annuity, (b) financed in part by the SRP, and (c) reduced by the commutation payment Applicant had taken on his early retirement pension.

122. The challenged decisions were taken pursuant to two Plan provisions—namely, SRP Sections 7.2(b) and 10.5—that afford the Committee some measure of discretion. The Tribunal has not previously considered its standard of review in cases where the Committee exercises discretionary authority.

123. When a challenge is raised to a decision taken under a Plan provision that grants the Committee discretionary authority, it will be appropriate for the Tribunal to refer to the Commentary on the Tribunal's Statute, which sets out grounds for overturning individual decisions taken in the exercise of *managerial* discretion. These include that the decision is "arbitrary, capricious, discriminatory, improperly motivated, *based on an error of law* or fact, or carried out in violation of fair and reasonable procedures." Commentary on the Statute, p. 19. (Emphasis added.) In the view of the Tribunal, the lawful exercise of discretionary authority will necessarily be confined by the principle that discretion granted is abused if it leads to an error of law. This general principle is underscored by the SRP itself in setting out the role and responsibilities of the Administration Committee; a cardinal principle governing the Committee's interpretation and application of the SRP in connection with prescribing rules, policies and procedures is that it may not act "contrary to the provisions" of the Plan. (SRP Section 7.2(c).) Given that the scope of the Committee's discretion is bound by the terms of the Plan itself, if the Tribunal concludes that the Committee has misinterpreted those terms, then the Committee will have erred.

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[10] *See infra* Applicant's challenges to decisions of Fund Management.

124. SRP Section 7.2(b) provides in part: "Nothing herein shall prevent the Administration Committee, at its own discretion, from reconsidering a decision taken . . . ." The Fund invokes that provision in support of the Committee's 2016 decision to reconsider and reverse its 2011 denial of a disability pension to Applicant and to replace retroactively his early retirement pension with a disability pension. In deciding whether the Committee has correctly interpreted and soundly applied the provisions of the Plan, the Tribunal will determine whether the Committee abused the discretion granted by SRP Section 7.2(b).

125. Another provision, SRP Section 10.5, grants the Committee authority to offset workers' compensation payments against "such part of [a] disability pension provided hereunder, in such equitable manner as the Administration Committee shall decide." The Committee relied on this provision in taking the decision to "coordinate" Applicant's disability pension and workers' compensation annuity. In adjudging whether the Committee correctly interpreted and soundly applied SRP Section 10.5, the Tribunal will determine whether the Committee's decisions exceeded the margin of its discretionary authority.

126. The cumulative effect of the decisions Applicant challenges was to replace his separate early retirement pension and workers' compensation annuity with a single "coordinated" annuity, capped at the amount payable to him as a workers' compensation annuity, financed in part by the SRP, and reduced by the commutation payment he had taken on his early retirement pension. The Tribunal will consider each of these elements of the Committee's decisions in turn. The Tribunal will begin, however, by addressing Applicant's challenge to the decision preliminary to the "coordination" decisions, that is, the Committee's decision to reconsider and reverse its earlier denial of a disability pension, and to replace retroactively Applicant's early retirement pension with a disability pension.

(2) Did the SRP Administration Committee err in deciding in 2016 to reconsider and reverse its 2011 decision denying Applicant a disability pension, and to grant him a disability pension retroactive to and in lieu of the early retirement pension on which he had retired in 2012?

127. In its Decision and Findings of January 22, 2016 (which it upheld in its Decision on Review of June 17, 2017), the SRP Administration Committee decided to grant Applicant a disability pension (SRP Section 4.3) retroactive to and in lieu of the early retirement pension (SRP Section 4.2) on which he had retired on February 1, 2012. The Committee thereby reversed its 2011 decision (taken at the time the Fund decided to separate Applicant for medical reasons pursuant to GAO No. 16) that he did not meet the criteria for disability retirement under SRP Section 4.3.

128. The Committee's 2016 decision was taken in response to the Fund's request for reconsideration of the disability pension decision in light of the Workers' Compensation Claim Administrator's 2015 determination of "permanent total disability" in terms of GAO No. 20, Section 5.01.1. That request for reconsideration followed the Grievance Committee's recommendation of a "make whole" remedy to place Applicant in the "same financial status in which he would have been if his eligibility for a worker compensation annuity had not been delayed by [the Claim Administrator]'s erroneous decision on the merits of his annuity application." (Grievance Committee Report and Recommendation, October 1, 2015, p. 5.) Fund

Management referred to the SRP Committee the "open question of the impact on [Applicant's] SRP benefits arising from the decision to grant [him] a workers' compensation annuity," in particular, "how [Applicant's] SRP pension benefit should be coordinated with [his] workers' compensation annuity." (Letter from Deputy Managing Director and Chief Administrative Officer to Applicant, November 6, 2015.)

129. Crucial to the Committee's decision to replace Applicant's early retirement pension with a disability pension was its observation that the SRP is silent as to the coordination of workers' compensation benefits and an early retirement pension but, by contrast, SRP Section 10.5 allows for offsetting workers' compensation benefits against a disability pension. "[I]n the normal processing of claims," said the Committee, "an early retirement pension would not be awarded to a staff member who was determined to be totally and permanently disabled [under the workers' compensation policy]." (SRP Administration Committee Decision and Findings, January 22, 2016, p. 4.) The Committee concluded that the "Administration Committee can *achieve the SRP policy of coordinating benefits for an individual who is permanently and totally disabled for work-related reasons*, by reconsidering its 2011 denial of the disability pension, and restoring a disability pension retroactive to February 2012." (*Id.*) (Emphasis added.) This purpose of "coordinating" Applicant's entitlements under the workers' compensation policy and the SRP is key to understanding the Committee's decision and the Fund's defense of it.

130. The question arises whether the discretion granted to the Committee by SRP Section 7.2(b) to reconsider its decisions includes the authority to apply retroactively the provision "shall be retired on a disability pension" (SRP Section 4.3) to replace an early retirement pension with a disability pension, on the ground that the Committee had earlier improperly denied a disability pension. The unusual circumstance here is that of an SRP participant who became disabled in terms of SRP Section 4.3 while in contributory service, but the disability was not recognized by the Fund at the time as qualifying under the Plan. According to the Fund, Applicant's case was the first in which that question had arisen before the Committee.

131. In its 2016 Decision, the Committee decided that there was "no longer any genuine dispute that [Applicant] is permanently and totally disabled, and has been so since before his retirement from the Fund in 2012." (SRP Administration Committee Decision and Findings, January 22, 2016, p. 2.) The Committee referred to the 2015 determination by the Workers' Compensation Claim Administrator (based on a 2014 review of medical records) as a "material change that renders the 2011 advice of [the Committee's Medical Advisor] moot." (*Id.*) In the view of the Committee, "Management's acceptance of the determination that [Applicant] has been permanently and totally disabled since 2011, coupled with [Applicant]'s own statements and representations of his doctor's opinions, constitute conclusive proof that [Applicant] is and has been permanently and totally disabled for purposes of Section 4.3 [of] the Plan since before his retirement in 2012." (*Id.*, pp. 1-2.)

132. The Committee further concluded that a disability pension is "mandatory" under the terms of the Plan upon a finding that a participant is permanently and totally disabled prior to retirement, given that SRP Section 4.3 provides that a participant in contributory service who meets the eligibility requirements for disability retirement "shall" be retired on a disability pension before his normal retirement date. "[T]he intent of the Plan," said the Committee, "is that an individual who is permanently and totally disabled is <u>not eligible</u> for an early retirement

pension, but instead must be provided a disability pension." (SRP Administration Committee Decision on Review, June 17, 2017, p. 4.) (Emphasis in original.)

133. Applicant challenges the Committee's decision on the following grounds: (i) the Committee lacked authority under the Plan to reverse, at the unilateral request of the Fund, its earlier denial of a disability pension and to grant Applicant a disability pension retroactive to and in lieu of his early retirement pension; (ii) the SRP Administration Committee and the Workers' Compensation Claim Administrator are not required to reach parallel outcomes as to a disability pension and a workers' compensation annuity; and (iii) in any event, the proper application of SRP Section 10.5 to Applicant's later-granted disability pension would have resulted in payments to Applicant equivalent to his retaining the early retirement pension plus the workers' compensation annuity.

134. Respondent, for its part, maintains: (i) the Committee acted within its authority in reversing its earlier decision and replacing retroactively Applicant's early retirement pension with a disability pension; (ii) Applicant met the eligibility criteria for a disability pension while still in contributory service; and (iii) the Committee was required by the determination of the Workers' Compensation Claim Administrator to reverse its earlier denial of a disability pension so as to rectify an "unjustifiable windfall" resulting from Applicant's having been granted an early retirement pension (not subject to the offsetting provision of SRP Section 10.5) along with a workers' compensation annuity.

135. The following questions arise. Did the Committee have authority to reconsider in 2016 at the unilateral request of the Fund (following Applicant's retirement on an early retirement pension in 2012) its 2011 decision that he did not meet the criteria for disability retirement in terms of SRP Section 4.3 and to replace, retroactively, his early retirement pension with a disability pension? Was the retroactive replacement of Applicant's early retirement pension with a disability pension necessitated by the Workers' Compensation Claim Administrator's decision to grant Applicant a workers' compensation annuity based on a finding of "permanent total disability" under GAO No. 20?

(a) Did the Committee have authority to reconsider its earlier decision?

136. In support of its authority to reconsider and reverse its 2011 denial of a disability pension, the SRP Administration Committee invoked SRP Section 7.2(b). That provision, which gives the Committee authority to take decisions in individual cases under the Plan, states in part: "Nothing herein shall prevent the Administration Committee, at its own discretion, from reconsidering a decision taken . . . ." The Committee additionally noted that SRP Section 4.3 provides that disability retirement may be initiated either "by the participant or the Employer."

137. The Committee also referred to Rule VIII (Review of Decisions) of its Rules of Procedure, which provides that the "Committee may review a Decision, either in response to a timely Application or at its own initiative." (SRP Administration Committee Rules of Procedure, Rule VIII, para. 2.) That Rule further states that the "Committee shall not, however, review a Decision so as to affect adversely any action taken or recommended therein," except in cases of "a. misrepresentation of a material fact; b. the availability of material evidence not previously before the Committee; or c. a disputed claim between two or more persons claiming any rights or

benefits under the Plan." (*Id.*) Anticipating Applicant's argument that the Committee's action was "adverse to the extent that it reduces the aggregate amount of payments to him from the SRP and from the Fund's workers' compensation budget," the Committee decided that a "conclusive determination by [the Workers' Compensation Claim Administrator], the Grievance Committee, and Management that [Applicant] is permanently and totally disabled constitutes new material evidence under Rule VIII." (SRP Administration Committee Decision on Review, June 17, 2017, pp. 3-4, 6.)

138. In asking the Tribunal to uphold the Committee's authority to reconsider its earlier decision, Respondent makes the following arguments. First, the Committee's decision to replace Applicant's early retirement pension with the larger disability pension was "not adverse to Applicant" and, therefore, the requirement of Rule VIII, para. 2(b), that the Committee shall not review a Decision "so as to affect adversely any action taken or recommended therein, except in cases of: . . . b. the availability of material evidence not previously before the Committee . . ." did not apply in Applicant's case. Second, even if the requirement did apply, it was met because the "conclusive determination by [the Workers' Compensation Claim Administrator] that [Applicant] is permanently and totally disabled—together with updated medical records and statements from Applicant that were not available at the time of the August 2011 decision—amounted to substantial new material evidence."

139. In asserting that the Committee's decision was not adverse to Applicant, the Fund submits that the "replacement of a lower early retirement pension with a higher disability pension" was "financially in his favor." Applicant responds that, although the disability pension was larger than the early retirement pension, the Committee's 2016 decision was adverse to him because it provided the predicate for the "coordination" of his SRP pension and workers' compensation annuity, resulting in a reduction of the total payments to him.

140. The Tribunal is unpersuaded by the Fund's argument that the Committee did not act against Applicant's interest in deciding—at the unilateral request of the Fund—to reconsider, and reverse, its earlier denial of a disability pension. Plainly, the Committee's decision to reverse its earlier denial of a disability pension and to replace retroactively Applicant's early retirement pension with a disability pension was part of a larger decision designed to avert a purported "unjustifiable windfall" to him consequent to retaining an early retirement pension alongside a workers' compensation annuity. The result of the Committee's decision was to reduce total payments to Applicant, and it is that reduction of payments that provides cause for his challenge.[11]

141. Respondent also refers to the "availability of material evidence not previously before the Committee" (Rule VIII, para. 2(b)), such as updated medical reports, in support of the Committee's authority to reverse its earlier decision, if that reversal is deemed adverse to Applicant. In the view of the Tribunal, it is not clear that the Rule's reference to "material

[11] The Tribunal observes that Respondent has not questioned the admissibility of Applicant's challenge in terms of meeting the "adversely affecting" requirement of Article II, Section 1(a), of the Tribunal's Statute.

evidence not previously before the Committee" would include evidence gathered subsequent to the initial decision; nor is it clear that it would be fair or equitable to ground upon the emergence of subsequent facts an exception to the principle that a later decision shall not be adverse to the interests of the claimant.[12] It is not necessary, however, for the Tribunal to interpret the Committee's Rule VIII, given the decisions the Tribunal reaches below as to the merits of Applicant's claims.

142. The Tribunal additionally observes that several years passed between the Committee's 2011 decision, denying Applicant a disability pension, and its reconsideration of that decision in 2016. The Committee's Rules of Procedure appear to place no time limit on the Committee's exercise of its discretion to reconsider decisions at its own initiative. *See* Rule VIII, para. 2 ("The Committee may review a Decision, either in response to a timely Application or at its own initiative."). By contrast, the same Rules require that a "Requestor, or any other person claiming any rights or benefits under the Plan, who wishes to dispute a Decision" must do so within 90 days after notification of the Decision. (Rule VIII, para. 1.) In this case, the Committee's reconsideration resulted from the Fund's 2015 request that the Committee decide "how [Applicant's] SRP pension benefit should be coordinated with [his newly granted] workers' compensation annuity." (Letter from Deputy Managing Director and Chief Administrative Officer to Applicant, November 6, 2015.)

143. Given that the Tribunal holds for Applicant on another basis, it will not be necessary to decide whether the Committee's application of its Rule VIII, including the substantial passage of time between the Committee's initial decision and its reconsideration at the unilateral request of the Fund, was consistent with fair procedures. Nevertheless, the Tribunal reaffirms that an SRP participant's ". . . stake in the outcome of the [Committee's] decision-making process deserves a high level of procedural protection" and that the Committee's process "be a fair and reasonable one is an interest shared by all Plan participants and the organization." *Ms. "J"*, para. 162.

(b) Was the retroactive replacement of Applicant's early retirement pension (SRP Section 4.2) with a disability pension (SRP Section 4.3) necessitated by the Workers' Compensation Claim Administrator's decision to grant Applicant a workers' compensation annuity pursuant to GAO No. 20, Section 5.01.1?

144. The timing of the Committee's 2016 reconsideration of its 2011 decision highlights the purpose of the Fund's request, which was to give effect to its view that the governing law requires Applicant's SRP pension and workers' compensation annuity be "coordinated" into a single annuity of lesser value than the sum of his early retirement pension and workers' compensation annuity. In this regard, Respondent goes further than seeking to ground the

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[12] Rule VIII of the SRP Administration Committee's Rules of Procedure may be compared, for example, with Article XVI (governing revision of judgments) of the Tribunal's Statute, which provides: "A party to a case in which a judgment has been delivered may, in the event of the discovery of a fact which by its nature might have had a decisive influence on the judgment of the Tribunal, and which at the time the judgment was delivered was unknown both to the Tribunal and to that party, request the Tribunal, within a period of six months after that party acquired knowledge of such fact, to revise the judgment."

Committee's reconsideration and reversal of its earlier decision on the availability of new medical evidence. The Committee's reconsideration of its 2011 decision was "*made necessary*," says the Fund, by the "unusual trajectory" of Applicant's case. (Answer, pp. 14-15.) (Emphasis added.) That "trajectory" was the later decision of the Workers' Compensation Claim Administrator, which led the Fund to seek a new decision from the SRP Administration Committee in order to "correct[ ] retroactively" a "discrepancy in findings."[13] (*Id.*)

145. Applicant counters that the Fund's law does not require harmonization of outcomes as between disability retirement under the SRP and "permanent total disability" under the workers' compensation policy. Nor, in the view of Applicant, do the Fund's regulations apply to any particular sequence of decision making as between those two separate channels.

146. To assess these arguments, it will be pertinent to consider the wording of the relevant provisions. SRP Section 4.3(a) prescribes the requirements for a disability pension as follows:

> A participant in contributory service *shall* be retired on a disability pension before his normal retirement date . . . following receipt by the Administration Committee of *written application therefore by the participant or the Employer*; on the condition that the Pension Committee must find, on the recommendation of the Administration Committee and the certification of a physician or physicians designated by the Administration Committee, that:
>
> > *(i) such participant, while in contributory service, became totally incapacitated, mentally or physically, for the performance of any duty with the Employer that he might reasonably be called upon to perform;*
> > *(ii) such incapacity is likely to be permanent; and*
> > *(iii) such participant should be retired.*

(Emphasis added.) A disability pension is "equal to the normal pension that would be payable to the participant if his normal retirement date had fallen on the date of his disability retirement, but using for such computation his highest average remuneration and eligible service at the time of his disability retirement." (SRP Section 4.3(b).) In contrast, an early retirement pension (SRP Section 4.2) applies in the following circumstances: "A participant who has reached the age of 55, *shall*, upon ceasing to be a participant before his normal retirement date *for any cause other*

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[13] The Fund's argument is the obverse of—although consistent with—the position it had earlier taken in the Grievance Committee when it sought to bar the award of a workers' compensation annuity to Applicant on the ground that the SRP Administration Committee had denied him a disability pension. The Grievance Committee rejected that approach, concluding that the Workers' Compensation Claim Administrator "cannot be preempted by and should not defer to the Administration Committee when deciding worker compensation annuity claims." At the same time, the Grievance Committee recommended that the Workers' Compensation Claim Administrator apply the same standard that governs disability pensions under the SRP. (*See* Grievance Committee Report and Recommendation, May 15, 2014, pp. 31-33.)

than death or disability retirement under the Plan, be retired under the Plan on an early retirement pension . . . ." (SRP Section 4.2(a).) (Emphasis added.) Accordingly, eligibility for a disability pension or an early retirement pension appears to be mutually exclusive.

147. The standard governing eligibility for a disability pension under the SRP may be compared with the standard of "permanent total disability" under the Fund's workers' compensation policy. GAO No. 20, Section 5.01.1, states in part: "Permanent total disability shall be determined by the Claim Administrator in accordance with the *procedure* for determining such disability under the Fund's Staff Retirement Plan." (Emphasis added.) The GAO does not, however, elaborate the substantive standard.

148. Yet another standard (or standards) governs in the case of separation of a staff member for medical reasons. GAO No. 13 (Leave Policies), Rev. 6, Annex I (Separation for Medical Reasons) provides that if, "on the basis of medical advice," the HRD Director decides that the staff member "will not be able to return to duty *in the foreseeable future*," separation procedures shall commence. (Emphasis added.) In cross-referencing that Annex, however, GAO No. 16 (Separation of Staff members), Rev. 6, Section 10 (Separation for Medical Reasons), states: "In case of *permanent incapacity*, when a determination has been made in accordance with the provisions of Annex I to General Administrative Order No. 13 that a staff member shall be separated for medical reasons, the procedures outlined below shall apply." (Emphasis added.) Respondent in these proceedings has indicated that a lower standard governs separation for medical reasons than applies in the case of the "more substantial, and enduring, disability pension." *See also Ms. "J"*, para. 146.

149. As noted, under the Fund's workers' compensation policy, a workers' compensation annuity (GAO No. 20, Section 5.01.1) is to be granted in cases of "permanent total disability." Under the SRP, a Plan participant is to be retired on a disability pension (SRP Section 4.3) when deemed "totally incapacitated, mentally or physically, for the performance of any duty with the Employer that he might reasonably be called upon to perform" and that incapacity is "likely to be permanent."[14] A question is whether, as the Fund maintains, the application of these standards must be "harmonized."

150. If, as the Fund contends, decisions as to eligibility for a workers' compensation annuity and a disability pension must be harmonized, then the sequence of the decision making in Applicant's case becomes essential to Respondent's argument that the SRP Administration Committee not only had the authority but was *required* to reverse its earlier decision denying Applicant a disability pension. In Respondent's view, having met the standard for "permanent total disability" under the workers' compensation policy, Applicant, as an SRP participant, must necessarily be retired on a disability pension. Referencing the sequence of events (and the Fund's interpretation of SRP Section 10.5, *see below*), the Fund asserts: "If Applicant's reasoning were to prevail, it would place him in a dramatically better financial situation than he would have been

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[14] The Tribunal has had occasion to interpret SRP Section 4.3 in the following Judgments: *Ms. "J"* (rescinding denial of disability pension); *Ms. "K"* (rescinding denial of disability pension); and *Ms. "CC"* (sustaining denial of disability pension).

in, had the finding of permanent and total disability [under the workers' compensation policy] been made before his retirement date, instead of after."

151. The Tribunal observes that the application of the Fund's various schemes relating to disability, including the question of what impact, if any, decisions taken under one scheme shall have upon decisions taken under another, is likely to lead to confusion, as amply demonstrated by this case. The standards for a disability pension and a workers' compensation annuity under the rules of the Fund emerge from different policies, are designed for different purposes, and the decisions are to be taken by different decision makers. The larger question of whether these standards should be reconciled in the drafting of the Fund's internal law is a policy decision to be taken by the appropriate organs of the Fund.

152. What is important here is whether harmonization of Applicant's workers' compensation annuity and disability pension decisions is made necessary by SRP Section 10.5. The Fund maintains that the requirement of harmonization of outcomes is implicit in the "coordination" provisions that it asserts govern in the circumstance that an SRP participant is deemed to have incurred a "permanent total disability" in terms of the Fund's workers' compensation policy. These "coordination" provisions, says the Fund, are found in SRP Section 10.5, Board decision EBAP/92/146, and GAO No. 20, Section 6.01.[15] In Respondent's view, the "Fund's rules were specifically drafted to ensure that the standards and procedures for a disability determination of the workers' compensation administrator and the SRP Administration Committee would be aligned." Furthermore, "where a person is entitled to disability benefits under both policies," says the Fund, "the provisions of these two benefit schemes require that the SRP and workers' compensation benefits be coordinated into a single pension or annuity." The Fund submits that maintaining an early retirement pension along with a workers' compensation annuity results in an "unjustifiable windfall" because SRP Section 10.5 applies only to disability pensions and not to early retirement pensions. In effect, in the Fund's view, an early retirement pension cannot coexist with a workers' compensation annuity.

153. Applicant counters that, assuming he had been properly granted a disability pension, the correct interpretation and application of SRP Section 10.5 would be that only the amount by which his disability pension exceeded his early retirement pension should be offset by the workers' compensation annuity. Applicant's interpretation of SRP Section 10.5, that is, to offset only "such part" of the disability pension as is attributable to disability, would have the effect of restoring the quantum of his early retirement pension while maintaining his workers' compensation annuity. It was therefore *not necessary*, says Applicant, for the Committee to replace his early retirement pension with a disability pension in order that he receive the payments to which he maintains he is entitled under the Fund's internal law.

154. Where the parties differ is as to how the offsetting provision of SRP Section 10.5 should be interpreted and applied on the assumption that Applicant had been properly granted a

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[15] *See infra* Assuming the Committee properly granted Applicant a disability pension, did it err in deciding to pay him a "coordinated" disability pension and workers' compensation annuity, which is (a) capped at the amount payable to him as a workers' compensation annuity, (b) financed in part by the SRP, and (c) reduced by the commutation payment he had taken on his early retirement pension?

disability pension. In the view of the Tribunal, the real dispute between the parties is not whether the Committee erred in replacing retroactively Applicant's early retirement pension with a disability pension but whether the related "coordination" decisions were in error. Accordingly, it is to that question that the Tribunal now turns.

(3) Assuming the Committee properly granted Applicant a disability pension, did it err in deciding to pay him a "coordinated" disability pension and workers' compensation annuity, which is (a) capped at the amount payable to him as a workers' compensation annuity, (b) financed in part by the SRP, and (c) reduced by the commutation payment he had taken on his early retirement pension?

155. It is recalled that the SRP Administration Committee, in the same 2016 Decision in which it retroactively replaced Applicant's early retirement pension with a disability pension, further decided: "It follows, pursuant to the Executive Board's decision in EBAP/92/146, that [Applicant] will not receive benefits under both the SRP and the workers' compensation policy; rather, he will receive the larger of the benefits, which, in his case, is the workers' compensation annuity. The amount of that annuity will be partially financed from the SRP in accordance with EBAP/92/146 and Section 10.5 of the Plan." In addition, the Committee decided that the annuity would be reduced by the commutation payment Applicant had taken on his early retirement pension. (SRP Administration Committee Decision and Findings, January 22, 2016, p. 4.)

156. Notably, the Committee in taking its "coordination" decisions in Applicant's case, and the Fund in asking the Tribunal to sustain those decisions, cite three sources: "In light of the *SRP's offset provision (Section 10.5), the Board decision (EBAP/92/146), and GAO 20, Section 6.01*, all of which establish that the Fund does not intend for a participant who is permanently and totally disabled to receive *both* a workers' compensation annuity and the entire disability pension under Section 4.3, the Committee cannot countenance the excess award that [Applicant] seeks." (*Id*.) (First emphasis added; second in original.)

157. The Tribunal observes that the SRP Administration Committee is authorized to take decisions only under the Plan and that Fund Management did not take a "coordination" decision in this case pursuant to GAO No. 20, Section 6.01. Accordingly, the decision challenged before the Tribunal in relation to the "coordination" of Applicant's SRP pension and workers' compensation annuity is that rendered by the SRP Administration Committee pursuant to SRP Section 10.5.

158. The essential issue is therefore whether the Committee correctly interpreted and soundly applied that Plan provision in the circumstances of Applicant's case. Given the Committee's (and Respondent's) invocation of Board decision EBAP/92/146 and GAO 20, Section 6.01, the Tribunal will consider, first, the plain meaning of SRP Section 10.5 and, second, whether the Committee exceeded the bounds of its discretionary authority by varying the plain meaning of that provision when referring to those additional texts.

(a) Did the Committee apply the plain meaning of SRP Section 10.5 in taking its "coordination" decisions in Applicant's case?

159. The Tribunal's jurisprudence makes clear that the SRP Administration Committee, in exercising its authority to "determine whether any person has a right to any benefit hereunder and, if so, the amount thereof" (SRP Section 7.2(b)), must "start by considering the provisions of the Plan." *Prader*, paras. 65, 69; *Nogueira-Batista*, para. 52. When the Committee fails to do so, the Tribunal will itself consider the question. *See Prader*, para. 70 (concluding, "on a plain reading of Section 16.3," that applicant had not made a currency election within the contemplation of the Plan). Furthermore, in prescribing rules, policies and procedures, the Committee may not act "contrary to the provisions" of the Plan. (SRP Section 7.2(c).) "[W]hen there is a conflict between a Plan provision and a rule promulgated by the Committee, the Plan provision must govern." *Prader*, para. 65. Accordingly, the Tribunal must ask whether the Committee followed the plain meaning of SRP Section 10.5 in Applicant's case or whether it varied that meaning in a manner that was contrary to the Plan.

160. SRP Section 10.5 provides in its entirety:

> 10.5 *Any amounts which may be paid or payable to any participant* or to his dependents or otherwise on his account, *as the result of premiums, taxes or contributions paid by the Employer under any Workmen's Compensation Law or plan*, or under any workman's compensation or employer's liability policy, or under any other plan, whether self-insured or otherwise, *on account of* his death or of *any incapacity for which he shall have been retired hereunder, may be offset against* and payable, or deemed to be payable, in lieu of *such part of his disability pension provided hereunder, in such equitable manner as the Administration Committee shall decide*.

(Emphasis added.)

161. The parties have offered contrasting interpretations. Applicant's essential argument is that he is entitled to both a vested early retirement pension, reflecting deferred past income, and a workers' compensation annuity, reflecting lost future earnings. Applicant seeks as relief the reinstatement of his early retirement pension and his separate workers' compensation annuity. Respondent, for its part, maintains that Applicant's "coordinated" disability pension and workers' compensation annuity, retroactive to the date of his retirement, represents the maximum benefit available under Fund law for total and permanent disability stemming from a work-related injury.

162. Applicant contends that the total offset of his SRP pension payments by his GAO No. 20 workers' compensation annuity is not "equitable" within the meaning of SRP Section 10.5. That Plan provision, says Applicant, in referring to the offsetting of "such part" of a disability pension, recognizes that only part of an SRP disability pension is attributable to the pensioner's disability, whereas the remainder represents the pension he would have been paid in the absence of disability. In Applicant's view, the only "equitable" offset in his case would be for that part of

the disability pension that represents the difference between the early retirement pension and the disability pension. This approach would, in effect, provide Applicant with the amount of his early retirement pension plus the workers' compensation annuity. Applicant submits that it was "highly inappropriate to treat the entire disability pension as a 'benefit' for 'incapacity' conferred by the Fund against which it can offset its workers' compensation obligations."

163. In Applicant's view: "Instead of this partial offset allowed under the SRP Plan, the [Committee's] decision has illegally offset the entire disability pension against the workers' compensation annuity." Applicant submits that the "written plan makes it clear under Section 10.5, that if the Fund pays a workers' compensation annuity under GAO 20, then it does not pay a disability supplement to the normal pension to the extent this is funded by the IMF/employer." "There is in fact no reason," says Applicant, "for any staff member qualifying for workers' compensation to apply [for a disability pension] as the SRP would in that case never pay the top up anyway as it is offset under Section 10.5." Applicant emphasizes that "[i]f the whole disability pension was to be set off, Section 10.5 would just say this . . . ." Applicant further submits that the Committee exceeded its authority by rendering a decision that was "contrary to the provisions" of the Plan (SRP Section 7.2) and that it took the challenged decision in "violation of its fiduciary responsibilities" as prescribed by SRP Section 9.1.

164. The Fund responds that "where a person is entitled to disability benefits under both policies, the provisions of these two benefit schemes require that the SRP and workers' compensation benefits be coordinated into a single pension or annuity." The Fund describes a disability pension as an "alternative pension benefit, augmented to take account of the participant's inability to work elsewhere in the remaining years before normal retirement age." The Fund concedes that "Applicant does have a vested right to retirement benefits under the Plan, but it does not follow that the type of retirement benefit cannot be changed."

165. In Respondent's view, the SRP Administration Committee's decision to "coordinate" Applicant's disability pension and workers' compensation annuity, so that Applicant receives a sum equivalent to the larger of the two payments, was based on proper legal considerations; it correctly interpreted and soundly applied Plan provisions. In particular, submits the Fund, the Committee properly relied on Board decision EBAP/92/146 in exercising its discretion to offset workers' compensation benefits against pension benefits in "such equitable manner as the Administration Committee shall decide" (SRP Section 10.5).

166. To resolve the parties' divergent interpretations, the Tribunal will consider the following questions: The first, and principal, question is whether the Committee applied the plain meaning of SRP Section 10.5 in deciding to pay Applicant a single annuity, capped at the amount payable to him as a workers' compensation annuity. A second, and related, question is whether the Committee applied the plain meaning of that same provision in deciding that Applicant's annuity would be partially financed by the SRP. A third question is whether the Committee correctly interpreted and soundly applied the plain meaning of SRP Section 10.5 in reducing Applicant's annuity by the amount of the commutation payment he had taken on his early retirement pension.

(i) Did the Committee apply the plain meaning of SRP Section 10.5 in deciding to pay Applicant a single annuity, capped at the amount payable to him as a workers' compensation annuity?

167. In the lengthy course of the proceedings in this case, including when specifically queried during the oral proceedings, the Fund has not brought to light any provision of its internal law that prescribes the payment of a single annuity in the case of an SRP participant who is entitled to a workers' compensation annuity pursuant to GAO No. 20. Instead, the Fund asks the Tribunal to infer such an interpretation from SRP Section 10.5, EBAP/92/146, and GAO No. 20, Section 6.01.

168. SRP Section 10.5 is the provision of the Plan that addresses the situation that arises when a participant is eligible for both an SRP disability pension and a workers' compensation annuity as a consequence of a service-incurred disability. The Plan provision appears to be designed to protect the SRP against paying "such part" of a disability pension that compensates for the same disability for which the participant is being compensated pursuant to the Fund's workers' compensation policy. In the view of the Tribunal, there is nothing, either explicit or implicit, in SRP Section 10.5 to support the Committee's view that application of that provision shall result in the payment of a single annuity.

169. In urging the Tribunal to sustain the Committee's decision to pay Applicant a single annuity, capped at the amount payable to him as a workers' compensation annuity, Respondent asks the Tribunal to ignore Applicant's accrual of pension entitlements under the SRP. The Fund has not offered an explanation consistent with the terms of SRP Section 10.5 for the complete offset—rather than a reduction—of Applicant's disability pension by his workers' compensation annuity. Although the Plan provision grants the Committee some "equitable" discretion, the scope of that discretion is constrained by the terms of the Plan. Accordingly, the discretion will be a narrow one.

170. In the firm view of the Tribunal, a plain reading of SRP Section 10.5 cannot support the conclusion that Applicant, a Plan participant who was otherwise eligible for an early retirement pension but instead was retroactively retired on a disability pension, shall be required to relinquish the pension he has accrued on the basis of contributions and years of service. The Tribunal has recognized that a ". . . retirement pension (whether for disability or otherwise) is not merely a 'benefit' conferred by the Fund on its staff. . . . While the Fund contributes substantially to the Plan and is responsible for its administration, the SRP participant likewise makes regular and significant contributions from earnings over the course of a career to ensure his entitlement, as authorized by the terms of the Plan, to income replacement at early retirement, normal retirement or in the event that he becomes totally and permanently incapacitated." *Ms. "J"*, para. 162, *Ms. "K"*, para. 100.

171. The entitlement of a Plan participant who has reached early retirement age to the pension that has accrued to him is reflected in the terms of the Plan; that entitlement applies irrespective of whether the participant becomes incapacitated, in terms of SRP Section 4.3, while in contributory service. This principle is illustrated by SRP Section 15.1(b), which permits election of a commutation payment in the case of a disability pension (in an amount up to one third of the early retirement pension that the participant would have been entitled to receive had he not

retired on a disability pension) if that disability pension becomes effective at or after the participant reaches 55 years of age. Thus, for purposes of having accrued an interest in the Plan sufficient to elect a commutation payment, the SRP treats a disability pensioner who is retired at or after early retirement age the same as a pensioner who is retired on a normal, early retirement, or deferred pension. [16]

172. Thus, the Committee's decision to pay Applicant a single annuity, capped at the amount payable to him as a workers' compensation annuity, was not taken in an "equitable manner," as required by SRP Section 10.5. The Committee's decision could not be the result of an "equitable" weighing of interests because the result was to place Applicant in the same position as he would have been had he not been a participant in the SRP at all. A reasonable interpretation, grounded in the text of the Plan, is that the offset will affect only "such part" of the pension as represents replacement of income forgone due to incapacity to perform "any duty with the Employer that he might reasonably be called upon to perform" (SRP Section 4.3). The Tribunal concludes that in failing to afford any weight to Applicant's contributions to, and entitlements under, the Plan, the Committee exceeded the margin of its discretionary authority and therefore erred in deciding to offset in total Applicant's disability pension by his workers' compensation annuity.

173. The Tribunal notes that Applicant has additionally framed his complaints in terms of disability discrimination (having lost his SRP pension as a result of becoming disabled through a work-related illness or injury) and age discrimination (on the ground that the longer the period of his contributory service, the greater the loss to him on account of the "coordination" decision). Because the Tribunal concludes that the Committee erred by failing to apply the plain meaning of SRP Section 10.5, it finds it unnecessary to address Applicant's arguments in terms of impermissible discrimination.

174. Properly construed, when SRP Section 10.5 permits the Committee to determine in an "equitable manner" that a workers' compensation annuity may be offset against and payable in lieu of part of a disability pension, it will not ordinarily be equitable for the Committee to permit the annuity to be offset against that portion of the disability pension that the SRP participant had, in effect, accrued as a result of contributions made by both the participant and the Fund during the participant's employment. Furthermore, SRP Section 10.5 does not prescribe payment of a single annuity. Rather, the plain meaning of that provision is that Applicant will retain both an SRP pension and a separate workers' compensation annuity.

(ii) Did the Committee apply the plain meaning of SRP Section 10.5 in deciding that Applicant's "coordinated" annuity would be partially financed by the SRP?

175. As a corollary to its decision to pay Applicant a single "coordinated" annuity, capped at the amount payable to him as a workers' compensation annuity, the Committee decided to

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[16] SRP Section 15.1(a) provides that a participant may elect to commute up to one third of a normal, early retirement or deferred pension into a lump-sum payment.

finance that annuity in part by the SRP. It was apparently through this blending of Applicant's SRP and workers' compensation payments that the Committee sought to "achieve the SRP policy of coordinating benefits for an individual who is permanently and totally disabled for work-related reasons." (SRP Administration Committee Decision and Findings, January 22, 2016, p. 4.)

176. Applicant contends that the partial financing by the SRP of the amount payable to him as a workers' compensation annuity conflicts with SRP Section 9.1, which prohibits diversion of the resources of the Plan's Retirement Fund. Additionally, Applicant submits that the financing decision violates the principle that it is the Fund's exclusive obligation as employer to compensate for lost future earnings resulting from a work-related injury. Applicant seeks as relief the reinstatement of his separate workers' compensation annuity and its financing solely by the IMF's administrative budget.

177. Respondent, for its part, invokes Board decision EBAP/92/146 in support of the Committee's approach to financing Applicant's "coordinated" annuity. (*See below*.) Respondent additionally seeks to support the Committee's financing decision by reference to national law. The Tribunal's decision, however, must rest on the facts of this case and the internal law of the Fund.[17] The Tribunal finds Respondent's argument by analogy to national law to be inapposite.

178. The Tribunal has decided above—assuming Applicant had been properly granted a disability pension—that the Committee erred in deciding to pay him a single "coordinated" annuity, capped at the amount payable to him as a workers' compensation annuity. That decision accordingly cannot stand. It follows that the question of how such a "coordinated" annuity shall be financed falls away.

179. The Tribunal nonetheless registers its disquiet and concern in relation to the Committee's decision to finance Applicant's "coordinated" annuity in the manner that it has. The Tribunal observes that SRP Section 9.1 restricts the use of the Plan's Retirement Fund as follows:

> 9.1 *All the contributions made by the Employer and by participants pursuant to Article 6 hereof, and all other assets, funds and income of the Plan, shall be* transferred to and become the property of the Employer, and shall be held and administered by the Employer, separately from its other property and assets, as the Retirement Fund, *solely for use in providing the benefits and paying the expenses of the Plan*, and no part of the corpus or income of the Retirement Fund shall be used for, or diverted to, purposes other than for the exclusive benefit of participants and retired participants or their beneficiaries under the Plan, prior to the satisfaction of all liabilities with respect to such participants,

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[17] Statute, Article III, provides in part: "In deciding on an application, the Tribunal shall apply the internal law of the Fund, including generally recognized principles of international administrative law concerning judicial review of administrative acts."

> retired participants and beneficiaries. *No person shall have any interest in or right to any part of the Retirement Fund* or of the earnings thereof or any rights in, or to, or under the Plan, or any part of the assets thereof, *except as and to the extent expressly provided in the Plan.*

(Emphasis added.) A separate provision, SRP Section 13.2, states:

> All benefits and payments under the Plan shall be paid only from the Retirement Fund.

180. Read together, SRP Sections 9.1 and 13.2 make clear that the assets of the Plan may be used only to pay the Plan's liabilities, and the Plan's liabilities may be paid only from the assets of the Plan. The SRP therefore does not permit the assets of the Plan to be used to meet the Fund's liabilities under its workers' compensation scheme. Nor may the Fund's budget for workers' compensation be used to meet the SRP's obligations to pay a disability pension. Hence, the blending of Applicant's SRP pension and workers' compensation annuity such that one is financed by the other is plainly "contrary to the provisions" of the Plan and cannot stand. It may be further observed that although SRP Section 10.5 states that a workers' compensation annuity may be offset against and payable in lieu of part of a disability pension, the Committee's decision, in effect, is to pay the disability pension in lieu of the workers' compensation annuity.

181. In the view of the Tribunal, limiting Applicant's annuity payments to the amount payable to him as a workers' compensation annuity, and financing that annuity in part by the SRP, not only denies Applicant the pension payments due him under the SRP but also results in his workers' compensation annuity being impermissibly subsidized by the SRP. This is a second reason why the Committee's "coordination" decisions are in error.

> (iii) Did the Committee apply the plain meaning of SRP Section 10.5 in deciding to reduce Applicant's "coordinated" annuity by the commutation payment he had taken on his early retirement pension?

182. As a further corollary to its decision to pay Applicant a single "coordinated" annuity, capped at the amount payable to him as a workers' compensation annuity and financed in part by the SRP, the Committee decided that the "commuted amount paid to [Applicant] in 2012 pursuant to his election under Section 15.1(a) of the Plan relative to his early retirement pension, shall be deemed to have been paid to him pursuant to an election under Section 15.1(b) for the disability pension, and *there shall be a consequential reduction in the annuity payable to him . . .* ." (SRP Administration Committee Decision and Findings, January 22, 2016, pp. 1-3.) (Emphasis added.)

183. Applicant contends that the commutation payment he had taken on his early retirement pension cannot be used to reduce further the Fund's exclusive responsibility to compensate him for his work-related injury. Applicant seeks as relief reimbursement of his early retirement pension commutation payment to the extent that it has been deducted from his "coordinated" annuity. Respondent, for its part, maintains that the Committee reasonably determined that the

commutation payment Applicant elected in respect of the early retirement pension should be treated as if it had been taken under the newly-awarded disability pension.

184. The Tribunal has found above that the Committee erred in deciding to pay Applicant a single annuity, capped at the amount payable to him as a workers' compensation annuity and financed in part by the SRP. That decision accordingly cannot stand. It follows that the question whether a further reduction of that annuity is permitted on the basis of Applicant's election of a commutation payment on his early retirement pension falls away. The Tribunal nonetheless notes—even if the Fund's interpretation of SRP Section 10.5 were accepted—that Respondent has not explained, if Applicant is to receive an annuity equivalent to the workers' compensation annuity (as the larger of the two payments), why that annuity should be reduced by a commutation payment he had taken on his SRP pension.

185. The Tribunal has concluded that the Committee did not apply the plain meaning of SRP Section 10.5 in the circumstances of Applicant's case. The Tribunal likewise concludes that there was no basis for the further reduction of the annuity on account of Applicant's commutation of his early retirement pension. This is an additional reason why the Committee's "coordination" decisions are in error.

(b) Did the Committee err in relying on Board decision EBAP/92/146 to vary the plain meaning of SRP Section 10.5 in taking its "coordination" decisions in Applicant's case?

186. The Tribunal has concluded above that the Committee did not apply the plain meaning of SRP Section 10.5 in taking the "coordination" decisions in Applicant's case. Given that the Committee's decisions were inconsistent with the plain meaning of the Plan provision, is there any supportable basis for the Committee to have varied that meaning in the circumstances of Applicant's case? Respondent submits that such basis is found in Board decision EBAP/92/146 and GAO No. 20, Section 6.01. The Tribunal considers these arguments below.

187. In its Decision on Review, the SRP Administration Committee asserted that when it "exercises its discretion" under SRP Section 10.5 to achieve an "equitable" offset, it is free to review any relevant documents and that it was "entirely reasonable for the Committee to follow the Board's decision [EBAP/92/146], or at least take this decision into consideration, when it makes an equitable determination regarding offsets under Section 10.5 of the Plan." (SRP Administration Committee Decision on Review, June 17, 2017, p. 4.) Respondent, in its pleadings, likewise invokes EBAP/92/146 in urging the Tribunal to sustain the "coordination" decisions.

188. The Tribunal is not called upon to pass on the validity of Board decision EBAP/92/146 but rather to decide whether the Committee erred in taking the decisions contested by Applicant in this case. Nonetheless, because the Board decision figures prominently in those decisions, and in Respondent's defense of them, the Tribunal has examined the text, origins, and effect of EBAP/92/146 (insofar as these are part of the record of the case) in drawing its conclusions as to whether the SRP Administration Committee exceeded the bounds of its discretionary authority in interpreting and applying SRP Section 10.5.

189. Executive Board decision EBAP/92/146 states in pertinent part:

> 1. (a) The *pension payable in respect of total and permanent disability resulting from a work-related illness or injury*, and the benefits payable in respect of work-related death, *shall be the higher of the amounts specified in GAO No. 20 and the amounts of the disability pension* or the death benefits, respectively, *payable under the provisions of the Staff Retirement Plan*.
>
> (b) In financing these pensions or benefits, *the Fund shall first pay from its own resources the full amounts prescribed as payable under the workers' compensation regulations of the District of Columbia. The balance of the financing shall be paid from the Staff Retirement Plan under the provisions governing the payment of disability pensions* or death benefits, as applicable. If the aggregate amount of such payments is less than the amounts payable under (a) above, the Fund will pay the difference from its own resources.

(Executive Board Decision No. 10166 – (92/126), adopted October 13, 1992.)[18] (Emphasis added.)

190. The Tribunal observes that there are key differences between EBAP/92/146 and SRP Section 10.5. First, the Board decision appears to assume that a single annuity will be paid where an individual qualifies for both a workers' compensation annuity and an SRP disability pension; in contrast, the Plan provision includes no such assumption. Second, the Board decision states that the single annuity shall be capped at the higher of the workers' compensation annuity or the disability pension; again, there is nothing in the Plan provision to support this approach. Third, the Board decision states that the funding of the single annuity will be apportioned such that the individual will be paid from the IMF's budget the amount he or she would have received had the IMF been subject to District of Columbia workers' compensation law, while the remainder of the amount specified by GAO No. 20 will be financed by the SRP; because the Plan provision does not indicate that a single "coordinated" annuity will be paid, it does not address the question of financing such annuity.[19]

191. In addition to observing the significant textual differences between EBAP/92/146 and SRP Section 10.5, the Tribunal notes that EBAP/92/146 originated in recommendations made by the Board's Committee on Administrative Policies concerning "modifications to the Fund's *workers' compensation policy*." (Executive Board Decision No. 10166 – (92/126), adopted

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[18] The Tribunal, following the practice of the parties and of the SRP Administration Committee in the decision under review, refers to the Board decision as "EBAP/92/146," which reflects the numbering of the paper underlying that decision.

[19] Save, of course, as has been made clear above, that the Plan makes plain that the assets of the Plan may not be used to finance benefits other than those provided for in the Plan.

October 13, 1992.) (Emphasis added.) As such, these recommendations did not propose, or effect, any modifications to the SRP.

192. The recommendations culminating in the Board decision were elaborated in an underlying paper, the chief focus of which was to propose revisions to the method of financing the Fund's workers' compensation obligation in the case of a "coordinated" disability pension and workers' compensation annuity. (Memorandum from Acting Chairman, Committee on Administrative Policies, "Workers' Compensation Policy," October 7, 1992, attaching paper "Recommended Modifications to GAO No. 20 –Workers' Compensation.") ("Board paper.") In addressing "Recommended Modifications to GAO No. 20 – Workers' Compensation," the Board paper did not take a view as to the interpretation of SRP Section 10.5. That task was one that the paper anticipated the SRP Administration Committee would address through rule-making:

> Under Section 10.5 of the Staff Retirement Plan, the benefits of a disability pension can be reduced to the extent that a benefit is paid under the workers' compensation policy. *The way in which such reductions are to be implemented lies with the Administration Committee of the SRP,* which is required to decide that this be done in an "equitable manner." *The Administration Committee has discussed the need to draw up rules for dealing with these cases* in a consistent manner and has concluded that it will do so if the Executive Board approves the proposed shift in the financing of the relevant payments.

(*Id.*) (Emphasis added.) It is notable that the paper referred to the "reduction," rather than elimination, of an SRP disability pension consequent to application of SRP Section 10.5, and it underscored that implementation of such a reduction must be done in an "equitable manner."

193. Importantly, the Board paper did not propose amendment of the SRP. Rather, the paper stated that "the proposals in this paper, if approved, will entail the amendment of that GAO [No. 20]" i.e., the Fund's workers' compensation policy. (Board paper, p. 5.) The record of the case shows that neither GAO No. 20 (which was last revised in 1982) nor SRP Section 10.5 (which remains unchanged since 1948) has been amended in light of the Board's 1992 decision. Accordingly, the history of Board decision EBAP/92/146 does not support the view that it effected changes to the SRP.

194. Given that the Board decision did not amend the Plan, the following question arises. Did the Committee rely on the Board decision in a manner that was contrary to the provisions of the Plan, so that it exceeded the margin of its discretionary authority to offset a workers' compensation annuity against "such part of [a] disability pension provided hereunder, in such equitable manner as the Administration Committee shall decide" (SRP Section 10.5)? To answer that question, the Tribunal will consider the manner in which the Committee applied EBAP/92/146 in reaching the decisions Applicant contests.

195. First, as to the payment to Applicant of a single "coordinated" annuity, capped at the amount payable to him as a workers' compensation annuity, the Committee in its Decision on Review stated that it understood the Board's decision to have "reiterated the longstanding rule"

that a "participant should receive either the workers' compensation annuity or the disability pension, whichever is higher." (SRP Administration Committee Decision on Review, June 17, 2017, p. 4.) No rule of the Committee has been cited.

196. What is decisive is that even if the Board decision might be understood as ratifying a practice akin to a rule of the Committee, such rule or practice remains subject to the limitation that it may not be "contrary to the provisions" of the Plan. (SRP Section 7.2(c).)[20] The Tribunal has recognized that there is a "'clear hierarchy of norms' in relation to the SRP and implementing Rules promulgated by the Committee; when there is a conflict between a Plan provision and such Rules, the Plan provision must govern." *Mr. "MM"*, para. 58, quoting *Prader*, para. 65. The Tribunal has concluded above that the plain meaning of SRP Section 10.5 does not support payment to Applicant of a single "coordinated" annuity, capped at the amount of the workers' compensation annuity, because that approach does not reflect an "equitable" weighing of interests.[21] In the view of the Tribunal, EBAP/92/146 does not provide a basis for the Committee to have varied that plain meaning.

197. Second, as to the financing of the annuity, the Tribunal has registered above its disquiet and concern as to the partial financing by the SRP of Applicant's "coordinated" annuity, which is capped at the amount payable as a workers' compensation annuity.[22] The Tribunal has concluded—assuming Applicant had been properly retired on a disability pension—that the Committee erred in taking the financing decision. That decision was tantamount to funding Applicant's workers' compensation annuity not solely by the IMF's resources but in part by the Plan, contrary to SRP Sections 9.1 and 3.2.

198. The Tribunal is further troubled by the Committee's rationale for the particular financing formula applied in Applicant's case, which it also adopted from the Board decision and underlying paper. In its Decision on Review, the Committee explained how the funding sources were to be apportioned in Applicant's case: "[T]he Fund will *first* draw on its administrative budget up to the amount payable under the workers' compensation regulations of the District of Columbia, and *second*, any balance shall be paid by the SRP (up to the amount of the disability pension)."[23] (SRP Administration Committee Decision on Review, June 17, 2017, p. 4.)

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[20] SRP Section 7.2(c) provides that the Committee has authority to "make, establish and prescribe such rules, policies, procedures and forms for the administration of the Plan, its interpretation, the exercise by individuals of rights or privileges hereunder, the disbursement of the Retirement Fund and the application of the Plan to individuals and the Employer" only to the extent that these "shall not be contrary to the provisions hereof."

[21] *See supra* Did the Committee apply the plain meaning of SRP Section 10.5 in deciding to pay Applicant a single annuity, capped at the amount payable to him as a workers' compensation annuity?

[22] *See supra* Did the Committee apply the plain meaning of SRP Section 10.5 in deciding that Applicant's "coordinated" annuity would be partially financed by the SRP?

[23] Respondent in its pleadings confirms that "payable under the workers' compensation regulations of the District of Columbia" refers to Section 32-1508 of Title 32, Chapter 15 of the D.C. Code, which limits workers' compensation liability under that statute to a maximum dollar amount prescribed by Section 32-1505.

(Emphasis in original.) Applying this formula, the Committee determined that sixty-eight percent of Applicant's annuity was to be financed by the SRP. (*Id.*, p. 5 and note 3.)

199. As seen, the focus of the paper underlying the Board decision was to recommend a change in the method of financing the Fund's workers' compensation obligation in the context of a "coordinated" disability pension and workers' compensation annuity. That change was to reverse the order of funding, which previously had relied first on the SRP and second on the IMF's administrative budget. The Board paper identified the problem with the Fund's then current practice as follows: "[S]tandard practice in the private sector [is] for employers to pay the whole of work-related disability benefits through workers' compensation insurance and not through a normal pension plan." It went on to state that the "Legal Department advises that the Fund's primary reliance on the SRP would seem to be contrary to the requirements of current U.S. pension and workers' compensation law, because *under those laws work-related disabilities are the exclusive liability of the employer*." (Board paper, p. 2.) (Emphasis added.) The paper additionally observed: "Using the resources of the SRP, which derive from both employer and employee contributions, for the payment of liabilities that in law are the sole responsibility of the employer *could arguably be inconsistent with the fiduciary standards applicable to a qualified pension plan*." (*Id.*) (Emphasis added.)

200. It is striking that the Board paper recognized these principles when it undertook to recommend changes to the method of financing. Although the Fund identified two significant problems with the partial financing of the Fund's workers' compensation obligation by the SRP, the recommendations of the Board paper failed to meet the very concerns it had highlighted. In the view of the Tribunal, EBAP/92/146 proposed an approach to the coordination of workers' compensation annuities and disability pensions that was inconsistent with the SRP.

201. The Tribunal finds that when the Committee relied on EBAP/92/146 in deciding that Applicant would be paid a single "coordinated" annuity, capped at the amount payable to him as a workers' compensation annuity, as well as in devising the particular formula by which his annuity would be financed, it exceeded its discretionary authority under SRP Section 10.5. Given that the Board decision did not represent an amendment to the Plan, the Committee could rely on that decision only to the extent that it was not contrary to the Plan's provisions. Having considered the manner in which the Committee applied EBAP/92/146 in taking the decisions that Applicant contests, the Tribunal concludes that the Board decision did not provide a basis for the Committee to have varied the plain meaning of SRP Section 10.5 in his case.

The paper underlying EBAP/92/146 explained that "[u]ntil 1980, the Fund voluntarily subscribed to the District of Columbia's workers' compensation program and observed the provisions of the District of Columbia's workers' compensation laws." The paper noted that in 1980, the Fund chose to self-insure and "chose to determine the provisions of its workers' compensation in a way that seemed more appropriate to the needs of the Fund and its employees." "In some respects," said the paper, "these provisions do not correspond with the provisions of the relevant regulations of the District of Columbia; in particular, *the levels of disability pensions set by the Fund are not subject to the limits prescribed by D.C. law*." (Board paper, p. 1.) (Emphasis added.)

(c) Is Applicant's challenge to the Committee's "coordination" decisions barred by Article XX of the Tribunal's Statute?

202. Respondent additionally seeks to quash Applicant's argument that the Committee exceeded its discretionary authority in relying on Board decision EBAP/92/146 by asserting that "Applicant's challenge to the Committee's decision could also be seen as a regulatory challenge"[24] but that such challenge is barred by Article XX[25] of the Tribunal's Statute because the Board decision pre-dated the entry in force of the Tribunal's Statute.

203. The Tribunal has held that the jurisdiction conferred by Article VI, Section 2, of its Statute—which provides that the "illegality of a regulatory decision may be asserted at any time in support of an admissible application challenging the legality of an individual decision taken pursuant to such regulatory decision"—is subject to the constraint of Article XX, which bars the Tribunal from considering challenges to "administrative acts" taking place before the commencement of its jurisdiction. *See Mr. R. Niebuhr, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2013-1 (March 12, 2013), para. 78; *Ms. "S", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 1995-1 (May 5, 1995), para. 22. Accordingly, the following question arises. Was the SRP Administration Committee's decision in Applicant's case taken "pursuant to"—in terms of Article VI, Section 2, of the Statute—Board decision EBAP/92/146?

204. In answering that question, the Tribunal observes that the Fund in its pleadings has referred to the Committee's exercise of discretion in deciding on Applicant's benefits: "In exercising its authority to interpret the meaning and intent of the SRP coordination provision (Section 10.5) . . . , as well as its *equitable discretion* to determine the manner in which the benefits should be coordinated in Applicant's case, the Administration Committee properly relied upon EBAP/92/146 . . . , a 1992 Board paper that is directly on point." (Emphasis added.) Moreover, the Committee in its Decision on Review stated that when it "exercises its discretion" to achieve an equitable offset, it is "free to review any relevant documents" and that it was "entirely reasonable for the Committee to follow the Board's decision, *or at least take this decision into consideration*, when it makes an equitable determination regarding offsets under Section 10.5 of the Plan." (SRP Administration Committee Decision on Review, June 17, 2017, p. 4.) (Emphasis added.) It is relevant that the Committee's decision responded to Fund Management's having "refer[red] to the appropriate SRP Committees the *open question* of the impact on [Applicant's] SRP benefits arising from the decision to grant [him] a workers' compensation annuity," in particular "how [Applicant's] SRP pension benefit should be

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[24] The Tribunal's jurisdiction extends to challenges to "regulatory decisions" of the Fund. A "regulatory decision" is defined as "any rule concerning the terms and conditions of staff employment, including the General Administrative Orders and the Staff Retirement Plan, but excluding any resolutions adopted by the Board of Governors of the Fund." (Statute, Article II, Section 2(b).)

[25] Article XX, Section 1, provides in pertinent part: "The Tribunal shall not be competent to pass judgment upon any application challenging the legality or asserting the illegality of an administrative act taken before October 15, 1992 . . . ." Executive Board decision EBAP/92/146 was taken on October 13, 1992.

coordinated with [his] workers' compensation annuity." (Letter from Deputy Managing Director and Chief Administrative Officer to Applicant, November 6, 2015.) (Emphasis added.)

205. Accordingly, the Committee was not—and did not consider itself to be—bound by the Board decision in taking its own decision. Rather, the Committee looked to the Board decision in exercising its discretion to coordinate Applicant's SRP and workers' compensation payments in an "equitable manner."

206. It follows that Applicant's challenge is neither to EBAP/92/146 or to SRP Section 10.5. Rather, his challenge is to the Committee's interpretation and application of SRP Section 10.5 in the circumstances of his case. This differentiates Applicant's complaint from others in which the Tribunal has concluded that Article XX barred a challenge to a regulatory decision pre-dating the Tribunal's jurisdiction where an individual decision taken pursuant to that regulatory decision was taken later. *See, e.g.*, *Niebuhr*, paras. 76-96.

207. The Tribunal has said that the "touchstone of [its] Article XX jurisprudence has been to ask '. . . when the administrative act whose legality is challenged . . . was taken.'" *Niebuhr*, para. 92, quoting *Ms. "S"*, para. 18. In *Mr. "X", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 1994-1 (August 31, 1994), para. 26, it was precisely the lack of discretion to make a different decision within the period of the Tribunal's jurisdiction that required the Tribunal to conclude that its jurisdiction was barred by Article XX. When the Board took its decision in 1992, it obviously did not determine the outcome of the Committee's exercise of its equitable discretion in Applicant's case. The individual decision was not taken "pursuant to" a regulatory decision in the sense of Article VI, Section 2, of the Statute. The Tribunal accordingly concludes that Applicant's challenge to the Committee's "coordination" decisions is not barred by Article XX of the Statute.

(d) Did the Committee err in relying on GAO No. 20, Section 6.01, to vary the plain meaning of SRP Section 10.5 in taking the "coordination" decisions in Applicant's case?

208. The SRP Administration Committee in taking its "coordination" decisions in Applicant's case, and the Fund in asking the Tribunal to sustain those decisions, refer not only to SRP Section 10.5 and Board decision EBAP/92/146, but also to a provision of the workers' compensation policy that addresses "Coordination of Workers' Compensation Benefits with the Fund's Other Benefit Plans." GAO No. 20, Section 6.01, provides in part: "Any entitlement to compensation under subsections 4.02, 4.03, 4.04, and 5.01.1 [workers' compensation annuity for permanent total disability] shall be reduced by the amount of all non-lump sum benefits paid . . . under the Fund's Staff Retirement Plan for the same illness, injury or death." This is the provision to which Respondent alludes in maintaining that "where a person is entitled to disability benefits under both policies, the provisions of these two benefit schemes require that the SRP and workers' compensation benefits be coordinated into a single pension or annuity."

209. The Tribunal has concluded above that SRP Sections 9.1 and 13.2 make clear that the assets of the Plan may be used only to pay the Plan's liabilities, and the Plan's liabilities may be paid only from the assets of the Plan. The consequence is that the blending of Applicant's SRP

pension and workers' compensation annuity such that one is financed by the other is plainly "contrary to the provisions" of the Plan.[26]

210. The Tribunal has said that when it is "presented with a question of interpretation of the Fund's internal law, [it] will seek to interpret the various rules of the Fund in a manner that ensures they are consistent with one another." *Mr. E. Verreydt, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2016-5 (November 4, 2016), para. 70. The Tribunal has considered how SRP Section 10.5 and GAO No. 20, Section 6.01, might be reconciled. The Tribunal observes that once "such part" of a disability pension as is attributable to disability is offset by the workers' compensation annuity in accordance with SRP Section 10.5, there will not be any "benefits paid . . . under the Fund's Staff Retirement Plan for the same illness, injury or death." (GAO No. 20, Section 6.01.) The Tribunal accordingly concludes that GAO No. 20, Section 6.01, may be in conflict with SRP Section 10.5.

211. In any event, to the extent that the SRP Administration Committee may have relied on GAO No. 20, Section 6.01, in taking a decision as to the method of financing the Fund's workers' compensation obligation in the context of Applicant's "coordinated" disability pension and workers' compensation annuity, it exceeded its authority. SRP Section 10.5 does not, and cannot, vest the Committee with authority to diminish the financial obligation of the Fund as Employer under its workers' compensation policy GAO No. 20. The responsibilities of that Committee are limited to taking decisions under the Plan. (SRP Section 7.2.) As noted, Fund Management did not take a decision in Applicant's case under GAO No. 20, Section 6.01.[27]

212. For these reasons, the Tribunal concludes that GAO No. 20, Section 6.01, does not provide a basis for the Committee to have varied the plain meaning of SRP Section 10.5 in the circumstances of Applicant's case.

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[26] Applicant additionally points out that SRP Section 10.5 refers to the offsetting of a disability pension by contributions "paid by the Employer" under the workers' compensation policy. If the Fund were permitted to finance part of its workers' compensation obligation by the SRP, then the offsetting of pension payments by workers' compensation payments pursuant to SRP Section 10.5 simply would not make sense. To the extent that the Fund's workers' compensation obligations were not to be paid by the Employer but rather by the SRP, their offset would not be supported by the principle of avoiding duplication of payments by the Employer.

[27] Notably, in its Decision on Review, the SRP Administration Committee acknowledged Applicant's argument that the maximum liability to be borne by the IMF (in contrast to the SRP) should not be limited by the ceiling on workers' compensation payments established under District of Columbia law. The SRP Administration Committee "decline[d] to opine on this issue," stating that "[a]ny challenge to the Board's decision and the calculation of the workers' compensation annuity thereunder is within the jurisdiction of the Grievance Committee, not the Administration Committee." (SRP Administration Committee Decision on Review, pp. 5-6.) The Grievance Committee, for its part, observed that it "continues to have questions about the conversion of a worker compensation annuity (payable out of Fund assets) to a disability pension (payable out of the assets of the SRP)" but concluded that it lacked jurisdiction to decide a challenge to a decision of the SRP Administration Committee: "[T]o the extent there is an arguable conflict between the Grievance Committee and the [SRP] Administration Committee in this case, only the Administrative Tribunal can resolve the conflict." (Grievance Committee's Final Decision and Recommendation, February 13, 2017, p. 9.)

(4) The Tribunal's conclusions on Applicant's challenges to decisions of the SRP Administration Committee

213. As to Applicant's challenges to decisions of the SRP Administration Committee, the Tribunal recognizes the Committee's discretionary authority in applying SRP Section 10.5. The Tribunal has concluded, however, that the Committee exceeded the margin of its discretionary authority under SRP Section 10.5 when it decided to pay Applicant a single "coordinated" disability pension and workers' compensation annuity, capped at the amount payable to him as a workers' compensation annuity, financed in part by the SRP, and reduced by the commutation payment he had taken on his early retirement pension. That decision represents an error of law. It follows that the Committee's decision to replace retroactively his early retirement pension with a disability pension, which was taken to "achieve the SRP policy of coordinating benefits for an individual who is permanently and totally disabled for work-related reasons" (SRP Administration Committee Decision and Findings, January 22, 2016, p. 4), also cannot be sustained.

214. Having concluded that the contested decisions of the SRP Administration Committee were in error, the Tribunal now turns to Applicant's challenges to decisions of Fund Management.

B. Applicant's challenges to decisions of Fund Management

(1) What standard of review governs Applicant's challenges to decisions of Fund Management?

215. The Tribunal has recognized that its standard of review, that is, the "degree of deference—or depth of scrutiny" that it applies in deciding the legality of a contested decision, ". . . may vary according to the nature of the decision under review, the grounds upon which it is contested, and the authority or expertise that has been vested in the original decision maker." *Ms. "J"*, para. 99. In cases involving the review of individual decisions taken in the exercise of managerial discretion, this Tribunal has consistently invoked the following standard set forth in the Commentary on the Statute, p. 19:

> [W]ith respect to review of individual decisions involving the exercise of managerial discretion, the case law has emphasized that discretionary decisions cannot be overturned unless they are shown to be arbitrary, capricious, discriminatory, improperly motivated, based on an error of law or fact, or carried out in violation of fair and reasonable procedures.

The Tribunal has also observed that the abuse of discretion standard "comprehends a number of different factors" and that "its operation in a particular case may emphasize one factor over others or it may involve multiple factors, depending upon such variables as the nature of the contested decision and the grounds on which the applicant seeks that it be impugned." *Ms. "J"*, para. 107.

216. In the instant case, some of the decisions of Fund Management contested by Applicant involve a wider range of discretion than do others, and some of Applicant's challenges raise primarily questions as to whether the law has been properly applied to the facts. The Tribunal recalls that the "abuse of discretion" standard, as articulated in the Commentary on the Statute, encompasses "error of law."

217. Applicant's challenges to decisions of Fund Management raise the following questions for consideration: (1) Did the Fund abuse its discretion in requiring Applicant to repay the lump-sum benefit granted him from the Separation Benefits Fund (SBF) at the time of his separation for medical reasons pursuant to GAO No. 16? (2) Did the Fund breach a "duty of care" to take preventative measures to ensure Applicant's health and safety? (3) Did the Fund improperly fail to provide compensation for alleged injury to Applicant's spouse? (4) Did the Fund improperly fail to provide Applicant compensation for lost personal effects? (5) Did the Fund improperly fail to afford Applicant "special sick leave" following his work-related injury? (6) Shall Applicant be compensated for alleged tax consequences of the Fund's determination of his disability-related benefits? (7) Shall the Fund be required to pay Applicant interest on its retroactive payments to him? (8) Shall Applicant be compensated for alleged procedural irregularities, delays, and failures to address confusion in the Fund's laws on disability?

(2) Did the Fund abuse its discretion in requiring Applicant to repay the lump-sum benefit granted him from the Separation Benefits Fund (SBF) at the time of his separation for medical reasons pursuant to GAO No. 16?

218. When Applicant was separated for medical reasons in fall of 2011 without access to an SRP disability pension, the Fund granted him the maximum payment (i.e., 22.5 months' salary, based on his years of service) from the Separation Benefits Fund (SBF), pursuant to GAO No. 16. Applicant opted to receive part of his SBF benefit as a paid separation leave, bridging him to an early retirement pension on February 1, 2012, with the remainder taken as a lump-sum payment.

219. In 2015, after the Workers' Compensation Claim Administrator determined that Applicant qualified for a workers' compensation annuity in terms of GAO No. 20, Section 5.01.1, the matter of implementation of that annuity returned to the Grievance Committee. The Grievance Committee recommended that the workers' compensation annuity be made retroactive to Applicant's 2012 retirement date and that he be required to repay (over a four-year period) the lump-sum SBF benefit he had received under GAO No. 16. Fund Management accepted that recommendation on November 6, 2015.

220. Applicant contested the Fund's decision to require his repayment of the SBF benefit in his initial Application to the Tribunal, *see Mr. "LL"*, Order No. 2016-1, para. 1, and renews that challenge here. Applicant contends that the Fund was not authorized either by GAO No. 16 or his separation arrangements letter to recover the lump-sum SBF payment. Applicant submits that a workers' compensation annuity that compensates for "loss of future earning capacity" is not comparable to a severance benefit that compensates for "loss of office" and therefore cannot be paid in lieu of it. Applicant additionally asserts that recovery of the SBF payment violates the Fund's two-year statute of limitations for recovery of undue payments. Respondent, for its part, maintains that it was entitled to recover the lump-sum SBF benefit paid to Applicant at the time

of his medical separation, in light of the later determination of permanent and total disability. "SBF payments," says the Fund, "are intended to serve as an alternative to the SRP disability pension, for those who face medical separation from the Fund, but who do not meet the test of 'permanent total disability' required for the more substantial and enduring, disability pension."[28] "[A]ny SBF payment received for a period subsequently found to have been covered by a disability pension, must be reimbursed to the Fund. This is the sound basis," submits the Fund, for its "decision to recover from Applicant the lump-sum portion of his SBF payment—that is, the portion that relates to the period beginning on the date of his retirement, *which is now covered by the retroactive portion of the coordinated disability pension and workers' compensation annuity*." (Emphasis added.)

221. GAO No. 16, Section 10.04, provides: "When a staff member who is separated for medical reasons *does not receive a disability pension under the Staff Retirement Plan*, he will be granted a separation payment from the Separation Benefits Fund in accordance with the provisions of Section 4.06." (Emphasis added.) Applicant's separation arrangements letter confirmed that his eligibility for SBF benefits was "based on the finding that [he was] not eligible for disability retirement under the Fund's Staff Retirement Plan." (Letter from HRD Director to Applicant, September 13, 2011.)

222. The governing written law, Applicant's separation arrangements letter, and Respondent's written and oral pleadings all refer to SBF benefits as being paid in the absence of a *disability pension under the SRP*. When the Fund decided in 2015 to recover Applicant's lump-sum SBF payment, however, he had not been deemed eligible for a disability pension. He had been granted a workers' compensation annuity pursuant to GAO No. 20, and it was on this basis that the Grievance Committee recommended requiring Applicant to repay the lump-sum SBF benefit.

223. In making its recommendation, the Grievance Committee acknowledged that GAO No. 16 does not refer expressly to workers' compensation benefits.[29] (Grievance Committee Report and Recommendation, October 1, 2015, p. 10.) The Committee noted the following argument presented by the Fund: "The Fund argues that because lump-sum separation benefits are only paid to staff who are ineligible for a disability pension and because the policies governing disability pensions and worker compensation annuities are to be 'harmonized,' Grievant's lump-sum separation benefit payment should be deducted from his worker compensation annuity." (*Id.*, p. 9.) The Grievance Committee concluded that the "policy of coordinating separation benefit payments and disability pension payments must also apply to worker compensation annuities." "Fund law," said the Grievance Committee, "therefore bars Grievant from receiving

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[28] It is notable that the Fund, in referring in its pleadings to a disability pension, quotes the standard of "permanent total disability," which is the standard that governs eligibility for a workers' compensation annuity.

[29] The Tribunal observes that the Grievance Committee has jurisdiction to ". . . hear any complaint brought by a staff member to the extent that the staff member contends that he or she has been adversely affected by a decision that was *inconsistent with Fund regulations* governing personnel and their conditions of service." Staff Handbook, Ch. 11.03 (Dispute Resolution), Section 5.6 (Jurisdiction of the Grievance Committee). (Emphasis added.)

both a lump-sum medical separation payment from the SBF and a worker compensation annuity." (*Id.*, pp. 10-11.)

224. The following question arises. Did the Fund abuse its discretion in taking the decision in 2015 to require Applicant to repay his lump-sum SBF payment on the basis that he had been granted a retroactive workers' compensation annuity?

225. In answering that question, it is essential to consider what the Fund's written internal law does and does not provide. Pertinently, GAO No. 16, Section 10.04, makes no mention of workers' compensation annuities. Nor does it impose a requirement that SBF benefits be repaid in the event that the denial of a disability pension is later reversed. Respondent has not brought to the Tribunal's attention any provision of the Fund's internal law stating that a staff member separating for medical reasons shall be required to repay benefits received from the SBF in the event that he later becomes eligible for other benefits.

226. In the view of the Tribunal, Respondent's position reflects a failure to distinguish sharply between a disability pension and a workers' compensation annuity, conflating these two benefit schemes in a manner that is inconsistent with the written law. As such, it suffers from the same defect that led the SRP Administration Committee erroneously to apply SRP Section 10.5 so as to offset in its entirety Applicant's disability pension by his workers' compensation annuity. Moreover, in light of the Tribunal's conclusion above that the SRP Administration Committee erred in taking that decision,[30] Respondent's argument that Applicant's SBF payment covers a period that is "now covered by the retroactive portion of the coordinated disability pension and workers' compensation annuity" is of no avail.[31]

227. The Tribunal further observes that even if a workers' compensation annuity were properly considered equivalent to a disability pension for purposes of GAO No. 16, Section 10.04, the Fund has not cited any provision of its written law that requires reimbursement of an SBF benefit as a consequence of a later award of a disability pension. In the absence of such authority, the Fund seeks to read such a requirement into the written law by invoking Applicant's separation arrangements letter, which included the following:

> You hereby acknowledge that the Fund's agreement to pay you separation benefits in connection with your separation for medical reasons is based on the finding that you are not eligible for disability retirement under the Fund's Staff Retirement Plan. *If this finding is later reversed and you are considered eligible for disability retirement, you will be required to reimburse the Fund for any separation benefits received following the date on which your disability retirement pension commences.*

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[30] *See supra* Applicant's challenges to decisions of the SRP Administration Committee.

[31] Although nominally awarded an SRP disability pension four years after his retirement, Applicant never received its benefits. That is because, in the same 2016 decision in which it granted Applicant a disability pension, the SRP Administration Committee erroneously interpreted SRP Section 10.5 in a manner as to vitiate that decision.

(Letter from HRD Director to Applicant, September 13, 2011.) (Emphasis added.)

228. Applicant's separation arrangements letter cannot, however, form the basis for requiring reimbursement of the SBF payment. First, the letter refers only to the consequence of subsequently receiving a *disability pension*; at the time the Fund made the decision to require repayment of the SBF lump sum, it had not determined that Applicant was eligible for a disability pension. Second, as the Tribunal has recognized, it is the written law that must govern, not the subscription of a staff member to a variation of its terms by countersigning a letter issued by the Fund. *See Prader*, para. 74 (applicant's written "acknowledgement," by signature on Pension Election Form, of a purported rule did not preclude his challenge; what was decisive was the actual governing law he was said to have "acknowledged"). It is further recalled that the Tribunal has held that the fact that an applicant has accepted terms of an agreement does not preclude his challenge to the legality of those terms. *See generally Mr. B. Tosko Bello, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2013-2 (March 13, 2013), para. 69; *Mr. M. D'Aoust, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 1996-1 (April 2, 1996), para. 12.

229. For the reasons elaborated above, the Tribunal concludes that the Fund abused its discretion when it decided in 2015 that Applicant must repay the amount of the lump-sum SBF payment he was granted upon separation for medical reasons pursuant to GAO No. 16. That decision was based on Applicant's having been awarded a workers' compensation annuity in 2015. There is no provision in the Fund's internal law that bars receipt of an SBF benefit in the circumstance that a staff member also receives a workers' compensation annuity. Nor has any provision been cited that requires reimbursement of an SBF benefit consequent to the later award of other benefits. Nor does Applicant's separation arrangements letter provide a basis for the Fund to recover the lump-sum SBF payment. Accordingly, the decision requiring Applicant to repay the lump-sum SBF benefit cannot be sustained.

230. The Tribunal additionally notes that the parties dispute whether the Fund's two-year statute of limitations for recovery of undue payments might offer Applicant relief in the circumstances of the case. Having decided that the Fund was without authority to recover the lump-sum SBF payment, it need not reach the question whether that recovery also violates limitations the Fund has adopted on recovery of undue payments.

(3) Did the Fund breach a "duty of care" to take preventative measures to ensure Applicant's health and safety?

231. Applicant contends that the Fund breached a "duty of care" to take preventative measures to ensure his health and safety, allegedly falling short of standards adopted by other international organizations in the circumstances giving rise to his permanent and total disability. Applicant further submits that the Fund's workers' compensation policy does not provide the exclusive remedy for breach of a "duty of care" under international administrative law. This is especially so, asserts Applicant, given that the Fund decided that its workers' compensation obligations to him would be paid in part by the SRP, rather than solely by the IMF's own funds. Applicant seeks 3 years' gross salary as compensation for pain and suffering consequent to alleged breaches of the Fund's duty to ensure his health and safety.

232. Respondent, for its part, maintains that what Applicant raises are "common law tort claims," similar to his original Grievances 1-7, which the Grievance Committee dismissed as falling outside its jurisdiction. (*See* Grievance Committee's Jurisdictional Decision with respect to Grievances 1-8, Final Recommendation with respect to Grievances 9, 10 and 13, Interim Recommendation with Respect to Grievance 11 and Discovery Rulings (July 13, 2016), p. 8.) In its pleadings to the Tribunal, the Fund maintains that Applicant's claim that it breached a "duty of care" to take preventative measures to ensure his health and safety should be rejected on the following grounds: (i) the Tribunal does not have jurisdiction over common law tort claims; (ii) the claims are "moot" because they represent an alternative legal theory for holding the Fund responsible for the same injury for which Applicant has been fully compensated under the Fund's internal law; and (iii) in the event that the Tribunal reaches the merits of these claims, they should be denied because the record demonstrates that the Fund "made extensive efforts, in keeping with its duty of care, to ensure Applicant's safety."

233. The Tribunal begins by observing that, to the extent that workers' compensation systems are designed to compensate employees in case of injury or illness arising out of employment without proof of negligence on the part of the employer, these no-fault compensation schemes will ordinarily protect the employer from various alternate forms of redress. *See generally Mr. "DD", Applicant v. International Monetary Fund, Respondent,* IMFAT Judgment No. 2007-8 (November 16, 2007), para. 131 (observing that a "fundamental principle underlying Workers' Compensation law in the United States is that Workers' Compensation provides the 'exclusive remedy' against an employer for injuries and illnesses arising out of the complainant's employment. As such, the Workers' Compensation system provides a basis for compensating employees for workplace injuries that removes such controversies from the system of tort law, providing a predictable system of payments to the employee without a finding of negligence against the employer."). Such compensation systems may, however, also recognize particular exceptions to this general rule.

234. Both Applicant and Respondent appear to accept the general principle underpinning workers' compensation systems. In Applicant's words: "An employer pays workers' compensation in lieu of being sued for potentially much higher damages in a court of law. It is a 'quid pro quo.'" Respondent, for its part, states: "Under the Fund's workers' compensation scheme, employees need only establish that their injury was work-related in order to recover the full amount permitted under that policy; in exchange, the extent of the Fund's liability for the injury is also determined by that policy."

235. Despite agreement on the general principle supporting workers' compensation schemes, Applicant takes issue with the proposition that the *quid pro quo* shall apply in his case, advancing several arguments. Principally, Applicant contends that the Fund has not upheld its end of the bargain because, in financing Applicant's "coordinated" disability pension and workers' compensation annuity, it has not funded the full amount of its workers' compensation obligation under GAO No. 20 through its administrative budget; rather, it decided to pay only up to the limit prescribed by District of Columbia law, with the SRP making up the shortfall.[32]

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[32] *See supra* Applicant's challenges to decisions of the SRP Administration Committee.

Applicant asserts that the Fund "violates the first fundamental tenet of workers compensation: that it is the exclusive financial responsibility of the employer, not the employee that has given up his rights to sue. If it is not the 'exclusive obligation' then it does not provide an 'exclusive remedy.'" Applicant reiterates this argument at several junctures in his pleadings: "Workers compensation is always the 'exclusive financial obligation' of the employer. To receive the protection from tort under workers compensation the employer must pay for the workers compensation." (Emphasis omitted.)

236. Applicant also observes, as did the Tribunal in *Mr. "DD"*, that GAO No. 20 does not, by its terms, provide an "exclusive remedy." *See Mr. "DD"*, para. 136 and note 23. The Fund maintains that such provision is implicit. In *Mr. "DD"*, the Tribunal did not squarely confirm that the Fund's workers' compensation policy, lacking an express provision, provides the "exclusive remedy" for workplace illness and injury. Rather, it observed that the "Fund's Workers' Compensation policy *may* provide an exclusive remedy in lieu of tort actions." *Id.*, para. 136. (Emphasis added.) In that Judgment, the Tribunal determined that in alleging violation of a Fund policy prohibiting workplace harassment, Mr. "DD" had raised a cause of action separate from that remedied by workers' compensation. The Tribunal concluded that the Fund's workers' compensation policy ". . . does not displace the Tribunal's remedial powers under its Statute to 'correct the effects' of an administrative act that it concludes has contravened the internal law of the Fund." *Id.*, para. 136.[33]

237. Applicant in this case proposes that his "duty of care" claim might be analogized to a separate complaint like that raised by the applicant in *Mr. "DD"*. He also invokes international administrative jurisprudence in support of the view that breach of a "duty of care" may supply a cause of action even where the governing workers' compensation scheme includes an exclusivity provision: "[I]nternational administrative law . . . does not agree that [remedies for] fundamental breaches of health and safety are restricted by the terms of an organization's workers' compensation insurance policy."

238. In the view of the Tribunal, a purposive interpretation of GAO No. 20 compels the conclusion that ordinarily the Fund's workers' compensation policy will supply the exclusive remedy in cases of injury or illness arising out of Fund employment, while exceptions to that exclusivity (as, for example, in *Mr. "DD"*) may also be drawn. The Tribunal's conclusion that a *quid pro quo* underlies the Fund's workers' compensation system is bolstered by the fact that, in adopting GAO No. 20, the Fund decided that it would pay workers' compensation at a level pegged to the Fund's own salaries. *See* Board paper underlying EBAP/92/146, p. 1 (Fund "chose to determine the provisions of its workers' compensation in a way that seemed more appropriate

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[33] In *Mr. "DD"*, the Tribunal also observed that the "inquiry in a Workers' Compensation case differs from the question to be resolved when a staff member alleges that he has been the object of harassment or a hostile work environment in contravention of the Fund's internal law. The question for the Workers' Compensation Claim Administrator would be whether Applicant sustained a compensable injury, i.e. an injury 'arising out of, and in the course of' his employment. The question for the Tribunal . . . is whether Applicant experienced impermissible treatment to which the Fund failed effectively to respond." *Id.*, para 113.

to the needs of the Fund and its employees," in particular, that compensation levels are "not subject to the limits prescribed by D.C. law.").

239. The Tribunal understands the thrust of Applicant's argument in respect of his "duty of care" claim, as emphasized in both his written and oral pleadings, to be that the essential *quid pro quo* recognized in workers' compensation schemes was not met by the Fund in his case because of the manner in which the SRP Administration Committee decided that the Fund's workers' compensation obligation (in the context of paying him a "coordinated" disability pension and workers' compensation annuity) would be financed. In the view of the Tribunal, having decided above[34] that the Fund shall finance fully from its administrative budget a workers' compensation annuity for Applicant (separate from his SRP pension), paid at 66-2/3 percent of his final pensionable remuneration per GAO No. 20, Section 5.01.1, the Tribunal has largely satisfied Applicant's concern that he has not been fully remedied for the permanent and total disability arising from his Fund employment. Given that the Tribunal has decided that the Fund may not shirk its workers' compensation obligation when an individual qualifies not only for a workers' compensation annuity but also for a disability pension under the SRP, the essential *quid pro quo* has been met.

240. The question remains whether Applicant has articulated a cause of action, cognizable under the Fund's internal law, that would compensate for an injury different from that compensated by his workers' compensation payments. On the record before it, the Tribunal does not find that Applicant has established such ground for exception to the exclusivity of the workers' compensation remedy he has received. In so deciding, the Tribunal does not exclude the possibility that a claim for breach of a "duty of care" may be cognizable by this Tribunal or that, in appropriate circumstances, it might form the basis for an exception to the exclusivity principle that governs the Fund's workers' compensation scheme. It need not decide those questions here.

241. The Tribunal concludes that Applicant has not articulated a clear distinction on the record of this case between the type of injury for which he seeks redress by his "duty of care" claim and that from which the implicit exclusivity of the Fund's workers' compensation policy shields the Fund, given that—by operation of this Judgment—the Fund shall pay Applicant fully (and retroactively) from its administrative budget a workers' compensation annuity calculated at 66-2/3 percent of his final pensionable remuneration. Accordingly, Applicant's "duty of care" claim is not sustained.

(4) Did the Fund improperly fail to provide compensation for alleged injury to Applicant's spouse?

242. Applicant contends that the Fund has wrongfully denied him compensation for the disability of his spouse, which he alleges resulted from the Fund's failure to take preventative measures to protect his family's health and safety.

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[34] *See supra* Applicant's challenges to decisions of the SRP Administration Committee.

243. Respondent, for its part, maintains that Applicant's claim for compensation for medical costs and lost earnings of his spouse should be denied because the Fund does not have a program that would provide insurance coverage for disability suffered by Applicant's spouse in the circumstances of the case, beyond benefits that may already have been provided under the Medical Benefits Plan or travel accident insurance. Additionally, maintains the Fund, Applicant's spouse has no standing of her own to raise such a claim before the Tribunal, as Applicant has not identified a relevant Fund benefit plan of which his spouse is an "enrollee . . . or beneficiary" in terms of Article II, Section 1[35] of the Tribunal's Statute.

244. In the view of the Tribunal, Applicant has failed to identify any cognizable legal basis for his claim in relation to the alleged injury to his spouse. The Tribunal accordingly cannot uphold that complaint.

(5) Did the Fund improperly fail to provide Applicant compensation for lost personal effects?

245. Applicant contends that the Fund wrongfully failed to reimburse him for personal effects lost in the circumstances that gave rise to his work-related injury.

246. Respondent, for its part, maintains that Applicant has not provided evidence that he sought or has been denied reimbursement for lost personal effects through insurance policies maintained by the Fund. Nor, says the Fund, has Applicant provided evidence to support a claim for compensation. The Fund submits that the demand made by Applicant is "belated and arbitrary," and, if relief is to be awarded, documentation that the Fund has supplied of Applicant's application for transit insurance to the overseas assignment is more probative than the listing of items Applicant includes with his Reply.

247. In the view of the Tribunal, in the absence of evidence that Applicant sought and was denied relief pursuant to the insurance program that the Fund provides for such losses, Applicant's complaint for compensation for lost personal effects cannot be sustained.

(6) Did the Fund improperly fail to afford Applicant "special sick leave" following his work-related injury?

248. In his Reply, Applicant seeks compensation for failure to afford him the maximum 24 months of "special sick leave" (GAO No. 13, Section 4.08), a category of sick leave available in cases of workers' compensation-covered illness or injury, to support his recovery from the work-related injury before he was separated from the Fund. This claim is similar to that raised by Applicant in his initial Application, in which he sought compensation for alleged premature separation from the Fund and failure to provide workers' compensation special leave to afford an opportunity for recovery from his work-related injury. *See Mr. "LL"*, Order No. 2016-1, para. 1.

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[35] Article II, Section 1(b), of the Tribunal's Statute extends the Tribunal's jurisdiction to "an enrollee in, or beneficiary under, any retirement or other benefit plan maintained by the Fund as employer challenging the legality of an administrative act concerning or arising under any such plan which adversely affects the applicant."

249. The Fund responds that Applicant's claim relating to the use of "special sick leave" for his workers' compensation absences should be denied because the sick leave and medical separation policies were properly applied in his case and he suffered no financial loss as a consequence of the category of sick leave identified as applicable.

250. Furthermore, the Fund cites Staff Bulletin 89/19 (Leave Policies: General Administrative Order No. 13) (August 4, 1989) that "[s]pecial sick leave, just like normal sick leave, would be provided only if the medical prognosis indicated an eventual return to duty." Staff Bulletin 89/19, p. 2. "Special sick leave," maintains the Fund, does not serve to extend the period of employment when a fitness-for-duty assessment indicates that the staff member should be separated for medical reasons.

251. In Applicant's case, given that he did not file a workers' compensation claim until a year following the injury and that claim initially was rejected as untimely, Applicant's sick leave was not categorized as "special sick leave." Nonetheless, documentation submitted by the Fund shows that Applicant utilized 245 days of regular sick leave and 53 days of extended sick leave at full pay. Applicant has not disputed this tabulation. *See also* Grievance Committee Recommendation, October 1, 2015, p. 7 and note 2 ("[T]he record indicates that Grievant received his full pay (by regular salary or leave) continuously until January 31, 2012."). The Fund submits that Applicant incurred no financial loss as a result of not being assigned "special sick leave" status, given that any unused sick leave balance is canceled as of the separation date.

252. The Tribunal observes that implicit in Applicant's complaint is that he should not have been separated for medical reasons until he had exhausted the maximum 24 months of "special sick leave" and that he was thereby denied a full opportunity to recover from his illness before the decision was taken to separate him. However, GAO No. 13 (Leave Policies), Rev. 6 (September 29, 2006), Annex I – Separation for Medical Reasons, Section 2.01.1, provides that ". . . further sick leave shall not be granted to a staff member in sick leave status if, on the basis of medical advice, the Director, Human Resources, has formed the opinion that the staff member will not be able to return to duty in the foreseeable future." In such case, the HRD Director is to initiate the process of medical separation. In introducing the category of "special sick leave" for workers' compensation related absence, the Fund stated that such leave would not differ from regular sick leave insofar as availability of any sick leave will cease once a staff member has been deemed for medical reasons "unable to return to duty in the foreseeable future" (GAO No. 31, Annex 1). *See* Staff Bulletin 89/19, p. 2.

253. GAO No. 13, Annex I, additionally provides that a staff member may object to a proposed medical separation by invoking the procedures of Section 2.02.3 to seek a further medical opinion from a panel of experts. Applicant in this case was informed of those procedures but did not challenge his medical separation.[36] Nor does Applicant challenge before the Tribunal the regulatory decision governing availability of "special sick leave" once a decision in favor of medical separation has been taken.

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[36] *See supra* at para. 42.

254. Given that Applicant did not challenge his medical separation in 2011, the Tribunal concludes that Applicant's complaint cannot be sustained.

(7) Shall Applicant be compensated for alleged tax consequences of the Fund's determination of his disability-related benefits?

255. Applicant contends that the Fund's errors in determining his benefits resulted in undue tax liabilities for which the Fund should compensate him. In particular, Applicant refers to differing tax treatment of pensions vis-à-vis workers' compensation payments and to the receipt of four years of workers' compensation back payments in 2016 rather than being paid over the relevant period. Applicant seeks as relief compensation for alleged tax consequences of the Fund's determination of payments due him stemming from his work-related injury.

256. The Fund responds that Applicant has not established any tax losses, nor any right to tax reimbursement by the Fund, in connection with his disability payments. The Fund additionally states that neither pension nor workers' compensation payments are made by the Fund on a net-of-tax basis.

257. The Tribunal understands Applicant's complaint as referring to a difference between the tax liabilities to which he has been subject on account of the Fund's errors and those for which he would have been responsible in the absence of such errors. The Tribunal observes that it is without evidence to determine this claim. Accordingly, on the record of the case, this complaint cannot be sustained.

(8) Shall the Fund be required to pay Applicant interest on its retroactive payments to him?

258. Applicant contends that the Fund should be required to pay him interest on the value of the four years of retroactive workers' compensation annuity payments that he was paid in 2016.

259. The Fund responds that Applicant has not established a basis for his claim for interest payments in connection with the Fund's retroactive payments to him, given that he had use of the lump-sum SBF payment (which the Fund later required him to reimburse[37]) during the period in which he was not receiving the workers' compensation annuity payments.

260. In the view of the Tribunal, although Applicant's complaint in respect of interest focuses on the Fund's payment to him in 2016 of past-due workers' compensation annuity payments, it raises the larger question of the role of interest in correcting the effects of rescinded decisions. Accordingly, Applicant's claim for interest will be dealt with below as part of the Tribunal's assessment of remedies in this case.[38]

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[37] *See supra* at para. 66.

[38] *See infra* REMEDIES.

(9) Shall Applicant be compensated for alleged procedural irregularities, delays, and failures to address confusion in the Fund's laws on disability?

261. Applicant contends that he is entitled to "[c]ompensation for procedural irregularities, delays and confusion in the Fund's laws governing disability." Applicant seeks as relief all unreimbursed legal fees, regardless of whether he prevails on the merits of the Application, plus six months' gross salary, for procedural irregularities, delays, and failures to address confusion in the Fund's disability laws, and for consequent mental and financial stress. Applicant raised a similar claim in his initial Application, in which he challenged the decision denying his request for compensation for alleged administrative failures and abuse of discretion in the delayed award of a workers' compensation annuity. *See Mr. "LL"*, Order No. 2016-1, para. 1. Applicant further asserts: "Instead of trying to ameliorate the compensation system's gaps, inconsistencies and confusions, the Fund has at each point aggressively sought to exploit its strange features and defects to minimize its financial exposure."

262. The Fund responds that delays and procedural complications in the case do not form a basis for compensation to Applicant. The Fund acknowledges that the process was "complex" but maintains that it would be "unfair to ascribe *all* the blame for the delays to the Fund." (Emphasis added.) The Fund notes that there were points in the proceedings in which Applicant failed to challenge an adverse decision, including the initial denial of workers' compensation benefits and of a disability pension in 2011. Additionally, in 2012-2013, says the Fund, the parties were engaged in settlement discussions. The Fund submits that "Applicant has not been without access to substantial resources at any time as a result of this process, but rather has received steady compensation and income replacement."

263. Applicant correctly points out that inconsistences and uncertainties in the Fund's internal law as it relates to staff members who become disabled during their employment have been noted by the Tribunal and other actors in the Fund's dispute resolution system for well over a decade. In *Ms. "J"*, para. 89, the Tribunal quoted the 2003 Annual Report of the Ombudsperson, which had referred to the '"jumble"' of rules governing disability and had commented that the '"dispersion of information also reflects a dispersion of responsibility, which means that managers and staff may end up dealing with different authorities, with sometimes differing interpretations of the rules and their inter-relationships.'" In a variety of circumstances, the Tribunal has emphasized the importance of clarity in the Fund's internal law. *See Ms. "EE"*, *Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2010-4 (December 3, 2010), para. 178 and cases cited therein. The Tribunal has moreover observed that "[a]dequate notice of the applicable procedures provides essential guidance, not only to members of the staff who may be subject to their effects, but also to the officers of the Fund charged with carrying out their prescriptions." *Id.*, para. 180 (referring to disciplinary procedures).

264. Applicant's case has further exposed disquieting features in the application of the Fund's internal law governing disability. These include a failure to distinguish clearly between a workers' compensation annuity under GAO No. 20 and a disability pension under the SRP. In 2011, this lack of clarity affected the process of deciding whether Applicant should be granted a workers' compensation annuity under GAO No. 20, following the denial of an SRP disability

pension.[39] In 2015, again conflating these two benefit schemes, the Fund abused its discretion in requiring Applicant to repay—on the ground that he had been granted a retroactive workers' compensation annuity—the lump-sum SBF payment he had had been granted upon his separation for medical reasons in 2011 without access to a disability pension.[40] In 2016, the same failure to distinguish adequately between a disability pension and a workers' compensation annuity caused the SRP Administration Committee to decide erroneously that Applicant's SRP pension and workers' compensation annuity should be blended into a single "coordinated" annuity, capped at the amount payable to him as a workers' compensation annuity, financed in part by the SRP, and reduced by the commutation payment Applicant had taken on his early retirement pension.[41]

265. The conclusions of the Grievance Committee are also pertinent in considering this claim. Following testimony that it said was marked by "contradictions and vacillation regarding the proper interpretation of GAO No. 20 and its interplay with the SRP," the Grievance Committee did not only recommend that the workers' compensation decision be reversed and remanded. It also asked the Fund to "re-examine GAO Nos. 13, 16 and 20, as well as the pension disability provisions of the SRP," which the Committee termed "complex and confusing," and suggested that "relevant personnel at the Fund and at the Claim Administrator be given additional training on the enforcement of the SRP and relevant GAOs." (Grievance Committee Report and Recommendation, May 15, 2014, pp. 30, 51-52.) Additionally, in recommending that the Fund reimburse the majority of Applicant attorneys' fees for that portion of the Grievance proceedings relating to his workers' compensation claim, the Grievance Committee observed that "a great deal of the delay in this case was the product of the [Workers' Compensation] claim administrator's misinterpretation and misapplication of Fund law." (Grievance Committee Recommendation with respect to Grievant's Request for Reimbursement of Attorney Fees, November 13, 2015, p. 3.) The Grievance Committee denied Applicant's request for separate relief for the delay. (Grievance Committee Report and Recommendation, October 1, 2015, pp. 17-18.)

266. The Tribunal has awarded compensation for intangible injury resulting from procedural failure in the taking of a sustainable decision, "underscor[ing] the importance of procedural fairness in the exercise of discretionary authority even in circumstances in which the lapse of fair process does not result in the rescission of the challenged administrative act." *Mr. S. Negrete, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2012-2

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[39] *See supra* CHANNELS OF ADMINISTRATIVE REVIEW: Grievance Committee's Recommendation on workers' compensation Grievance and Management's acceptance (2014).

It is notable that similar uncertainties had marked the circumstances that gave rise to the Tribunal's Judgment in *Ms. "J"*. *See, e.g., Ms. "J"*, para. 170 (noting without deciding as among "procedural issues of concern" that SRP Administration Committee's denial of disability pension may have been improperly influenced by decision of Workers' Compensation Claim Administrator that applicant had incurred partial rather than total loss of function).

[40] *See supra* Did the Fund abuse its discretion in requiring Applicant to repay the lump-sum benefit granted him from the Separation Benefits Fund (SBF) at the time of his separation for medical reasons pursuant to GAO No. 16?

[41] *See supra* Applicant's challenges to decisions of the SRP Administration Committee.

(September 11, 2012), para. 140 (collecting cases). The Tribunal has not, however, awarded separate compensation for procedural failure in relation to a claim that it has sustained on the merits. Nor does it find ground to do so in this case. *See Ms. "J"*, para. 171 (having "decided Ms. "J"'s Application in her favor on substantive grounds[,] . . . the Tribunal finds no need to pass upon her procedural complaints.").

267. In this Judgment, the Tribunal has decided that the SRP Administration Committee erred in deciding: (i) to reverse its 2011 decision denying Applicant a disability pension, and to grant that disability pension retroactive to and in lieu of the early retirement pension on which Applicant had retired in 2012; and (ii) to pay Applicant a "coordinated" disability pension and workers' compensation annuity, capped at the amount payable to him as a workers' compensation annuity, financed in part by the SRP, and reduced by the commutation payment he had taken on his early retirement pension. It has also decided that Fund Management abused its discretion in requiring Applicant to repay his lump-sum SBF benefit as a consequence of being awarded a workers' compensation annuity. These are the essential areas of uncertainty in the Fund's law that have been raised by the Application. Applicant will be fully compensated for these errors.[42]

268. Accordingly, the Tribunal does not sustain Applicant's claim for compensation for alleged "procedural irregularities, delays and failures to address confusion in the Fund's laws governing disability." Although this complaint does not form a separate basis for relief, the Tribunal may weigh the concerns it raises in assessing elements of the remedies in the case, in particular, payment of interest on retroactive payments, and reimbursement of legal fees and costs.

(10) <u>The Tribunal's conclusions on Applicant's challenges to decisions of Fund Management</u>

269. As to Applicant's challenges to decisions of Fund Management, the Tribunal has concluded as follows. First, the Fund abused its discretion when it decided to require Applicant, on the basis of his later having been granted a workers' compensation annuity, to repay the amount of the lump-sum SBF payment he had received pursuant to GAO No. 16 upon his separation for medical reasons. Second, the Tribunal does not uphold Applicant's complaint that the Fund breached a "duty of care" to take preventative measures to ensure his health and safety, given that, by this Judgment, the Fund will pay Applicant fully (and retroactively) from its administrative budget a workers' compensation annuity calculated at 66-2/3 percent of his final pensionable remuneration per GAO No. 20, Section 5.01.1; Applicant has not articulated a clear distinction on the record of this case between the type of injury for which he seeks redress by his "duty of care" claim and that from which the implicit exclusivity of the Fund's workers' compensation policy shields the Fund. Third, Applicant has failed to identify any cognizable legal basis for his claim for compensation in relation to the alleged injury to his spouse; that complaint accordingly cannot be sustained. Fourth, Applicant's complaint that the Fund improperly failed to provide him with compensation for lost personal effects cannot be sustained;

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[42] *See infra* REMEDIES.

Applicant has not shown that he sought and was denied relief pursuant to the insurance program that the Fund provides for such losses. Fifth, Applicant's complaint that the Fund improperly failed to afford him "special sick leave" (GAO No. 13, Section 4.08) prior to his separation from the Fund is not sustained; Applicant did not challenge the medical separation decision that terminated his sick leave entitlements. Sixth, the Tribunal cannot sustain on the record of the case Applicant's claim for compensation for alleged tax consequences of the Fund's determination of his disability-related benefits; the Tribunal is without evidence to determine this claim. Seventh, Applicant's complaint that the Fund should be required to pay him interest on the value of four years of retroactive workers' compensation payments made to him in 2016 raises the larger question of the role of interest in correcting the effects of decisions rescinded by the Tribunal in this case; that question will be considered below as part of the assessment of remedies. Eighth, the Tribunal does not sustain Applicant's claim for compensation for alleged procedural irregularities, delays, and failures to address confusion in the Fund's laws on disability; although the complaint does not form a separate basis for relief, the Tribunal may weigh the concerns it raises in assessing elements of the remedies in the case, in particular, payment of interest on retroactive payments, and reimbursement of legal fees and costs.

CONCLUSIONS OF THE TRIBUNAL

270. For the reasons elaborated above, the Tribunal has concluded:

271. First, as to Applicant's challenges to decisions of the SRP Administration Committee, the Tribunal has concluded that the Committee erred in deciding: (i) to reverse its 2011 decision denying Applicant a disability pension, and to grant that disability pension retroactive to and in lieu of the early retirement pension on which Applicant had retired in 2012; and (ii) to pay Applicant a "coordinated" disability pension and workers' compensation annuity, which is (a) capped at the amount payable to him as a workers' compensation annuity, (b) financed in part by the SRP, and (c) reduced by the commutation payment Applicant had taken on his early retirement pension. Those decisions, which resulted from the Committee's erroneous interpretation and application of SRP Section 10.5, wrongfully deprived Applicant of his SRP pension, fully financed by the Plan, and a separate workers' compensation annuity, fully financed by the IMF.

272. Second, as to Applicant's challenges to decisions of Fund Management, the Tribunal has concluded that the Fund abused its discretion in deciding to require Applicant, on the basis of his later having been granted a workers' compensation annuity, to repay the amount of the lump-sum SBF payment he had received pursuant to GAO No. 16 upon his separation for medical reasons. For the reasons set out in the preceding section, the Tribunal has concluded that Applicant's additional challenges to decisions of Fund Management are not sustainable on the record of the case.

REMEDIES

273. Applicant seeks as relief: (a) reinstatement of his early retirement pension; (b) reinstatement of his separate workers' compensation annuity; (c) that the workers' compensation annuity be financed solely by the IMF's administrative budget; (d) reimbursement of Applicant's early retirement pension commutation payment to the extent that it has been deducted from his

"coordinated" annuity payments; (e) reimbursement of Applicant's repayment of the lump-sum SBF (i.e., medical separation) payment; (f) 3 years' gross salary as compensation for pain and suffering consequent to alleged breaches of the Fund's "duty of care" to ensure Applicant's health and safety; (g) 3 years' gross salary as compensation for injury to Applicant's spouse; (h) compensation for lost personal effects; (i) reimbursement for the maximum 24 months of "special sick leave" in connection with his work-related injury; (j) compensation for interest lost as a consequence of retroactive payments to him; (k) compensation for alleged tax consequences of the Fund's determination of payments due to Applicant stemming from his work-related injury; (l) 6 months' gross salary, plus all legal fees incurred since the commencement of proceedings in any forum, regardless of whether Applicant prevails on the merits of the Application, as compensation for procedural irregularities, delays, and failure to address confusion in the Fund's disability laws and for consequent mental and financial stress; and, in any event, (m) legal fees and costs, which the Tribunal may award, in accordance with Article XIV, Section 4 of the Statute, if it concludes that the Application is well-founded in whole or in part.

274. The Tribunal's remedial authority in respect of challenges to individual decisions is found in Article XIV, Section 1, of the Statute, which provides:

> If the Tribunal concludes that an application challenging the legality of an individual decision is well-founded, it shall prescribe the rescission of such decision and all other measures, whether involving the payment of money or otherwise, required to correct the effects of that decision.

275. The Tribunal's jurisprudence reflects that its remedial powers fall broadly into three categories: (i) rescission of the contested decision, together with measures to correct the effects of the rescinded decision through monetary compensation or specific performance; (ii) compensation for intangible injury resulting from procedural failure in the taking of a sustainable decision; and (iii) compensation to correct the effects of intangible injury consequent to the Fund's failure to act in accordance with its legal obligations in circumstances where there may be no decision to rescind. *See Ms. "GG" (No. 2),* para. 444 and notes 58-60.

A. Rescission of contested decisions and measures to correct their effects

276. The Tribunal has concluded above that Applicant has prevailed on his principal claims that the SRP Administration Committee erred in deciding: (i) to reverse its 2011 decision denying Applicant a disability pension, and to grant that disability pension retroactive to and in lieu of the early retirement pension on which Applicant had retired in 2012; and (ii) to pay Applicant a "coordinated" disability pension and workers' compensation annuity, capped at the amount payable to him as a workers' compensation annuity, financed in part by the SRP, and reduced by the commutation payment Applicant had taken on his early retirement pension. Having concluded that the Committee's decisions were in error, the Tribunal rescinds those decisions.

277. The Tribunal has also concluded that Applicant has prevailed on his claim that the Fund abused its discretion in requiring him to repay the amount of the lump-sum SBF payment granted

upon his separation for medical reasons pursuant to GAO No. 16. Accordingly, that decision too is rescinded.

278. To "correct the effects" (Article XIV, Section 1) of those rescinded decisions, the Tribunal decides that the Fund shall:

- Ensure that Applicant is paid an early retirement pension retroactive to the date of his eligibility for such pension, i.e., February 1, 2012, calculated in accordance with SRP Section 4.2 and reduced by the commutation payment he had taken on his early retirement pension pursuant to SRP Section 15.1(a), and with the benefit of all cost-of-living adjustments pursuant to SRP Section 4.11, with all sums to be paid solely by the SRP Retirement Fund;

- Pay Applicant a separate workers' compensation annuity retroactive to the date of his separation from the Fund, i.e., February 1, 2012, calculated at 66-2/3 percent of his final pensionable remuneration in accordance with GAO No. 20, Rev. 3, Section 5.01.1, and with the benefit of all cost-of-living adjustments pursuant to GAO No. 20, Rev. 3, Section 7, with all sums to be paid solely by the IMF (i.e., not by the SRP Retirement Fund); and

- Reimburse Applicant the sum recovered from him as a consequence of the Fund's decision to require him to repay the lump-sum SBF payment, granted pursuant to GAO No. 16 upon his separation for medical reasons.

279. In respect of the implementation of these remedies, the Tribunal further decides that the Fund shall:

- Within 60 days of its receipt of this Judgment, ensure that Applicant's future payments be calculated and paid in accordance with the determinations made above; and

- Within 60 days of its receipt of this Judgment, pay Applicant all of the retroactive payments due him in accordance with the determinations made above. In making those retroactive payments, the Fund shall deduct the sums already paid to Applicant since February 1, 2012, whether as an early retirement pension, a workers' compensation annuity, or a "coordinated" disability pension and workers' compensation annuity.

280. The Tribunal now turns to the question whether it shall award Applicant interest on the retroactive payments due him, as part of the measures required to correct the effects of the rescinded decisions.

(1) <u>As part of its remedial authority, shall the Tribunal award Applicant interest on retroactive payments?</u>

281. As noted above, among his challenges to decisions of Fund Management, Applicant contends that the Fund should be required to pay him interest on the value of four years of

retroactive workers' compensation annuity payments paid to him in 2016.[43] The Fund responds that Applicant has not established a basis for his claim for interest on the retroactive payments, given that he had use of the lump-sum SBF payment (which the Fund later required him to reimburse[44]) during the period in which he was not receiving the workers' compensation annuity payments.

282. The Tribunal has considered that Applicant's complaint in respect of interest focuses on the Fund's 2016 disbursement to him of past-due workers' compensation annuity payments. At the same time, that complaint raises the larger question of the role of interest in correcting the effects of rescinded decisions. Accordingly, the Tribunal has decided to treat the question of interest on retroactive payments as part of its assessment of remedies in the case. The Tribunal additionally has concluded, in relation to Applicant's request for compensation for alleged "procedural irregularities, delays and failures to address confusion in the Fund's laws on disability," that although that complaint does not form a separate basis for relief, the Tribunal may weigh the concerns it raises in assessing elements of the remedies in the case, including the question of payment of interest on retroactive payments.[45]

283. This Judgment is the first in which the Tribunal expressly addresses the question of its authority to award pre-judgment interest on monetary compensation, pursuant to the remedial powers granted by Article XIV of the Statute. In several Judgments, the Tribunal has ordered as relief that the Fund make payments to an applicant that it had wrongfully denied to him or her. *See Ms. "J"* (rescinding denial of disability pension and granting it retroactively); *Ms. "K"* (rescinding denial of disability pension and granting it retroactively); *Mr. "R" (No. 2), Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2004-1 (December 10, 2004) (awarding security costs wrongfully denied in connection with overseas assignment); *Ms. V. Shinberg (No. 2), Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2007-5 (November 16, 2007) (awarding attorneys' fees wrongfully denied, incurred in maintaining workers' compensation coverage); *Prader* (ordering payment of any difference between pension payments actually made and those that should have been made, according to applicant's currency election); *Verreydt* (ordering payment of home leave benefit wrongfully deducted from applicant's separation payment). In none of those cases did the Tribunal award interest on retroactive payments. The question of awarding interest was not expressly considered in those Judgments.

284. In two other Judgments, in which the Tribunal gave effect to orders for division of marital property or for child support, pursuant to SRP Section 11.3, by deductions from an SRP participant's pension payments, the relief ordered by the Tribunal included interest. In *Mr. "P" (No. 2)*, para. 145, the Tribunal concluded that the SRP Administration Committee erred in

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[43] *See supra* Applicant's challenges to decisions of Fund Management: Shall the Fund be required to pay Applicant interest on its retroactive payments to him?

[44] *See supra* at para. 66.

[45] *See supra* Shall Applicant be compensated for alleged procedural irregularities, delays, and failures to address confusion in the Fund's laws on disability?

deciding that a "bona fide dispute" existed (within the meaning of the Administration Committee Rules under SRP Section 11.3) as to the efficacy, finality or meaning of an order for division of marital property. Under its Rules, the Committee had escrowed the amount of the disputed payments. The Tribunal ordered as relief rescission of the escrowing decision and that the Fund pay to the ex-spouse the "amount now held in escrow, *including interest*" (emphasis added), as well as, in future, to pay to the ex-spouse the requisite percentage of the SRP participant's pension payments. *Id.*, Decision. In *Ms. "M" and Dr. "M", Applicants v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2006-6 (November 29, 2006), the Tribunal ordered that a series of child support orders be given effect, pursuant to SRP Section 11.3, by making deductions from the pensioner's prospective monthly pension payments and paying these sums over to the applicants until the total amount owing was discharged. The Tribunal ordered that the amounts deducted include "interest at the prevailing rate compounded quarterly . . . until the date on which each monthly pension payment is made." *Id.*, Decision. Although the Tribunal's Judgment in *Ms. "M" and Dr. "M"* did not require that the Respondent IMF pay interest, in ordering interest be deducted from the pensioner's entitlements, it gave recognition to the principle that interest payments may be required to discharge fully past-due obligations.

285. In a variety of circumstances, other international administrative tribunals have recognized as within the scope of their remedial authority an "'inherent power to award interest on payments due which have not been made in circumstances in which the fault for failing to pay is attributable to the Respondent'" organization. *Alrayes v. International Finance Corporation*, WBAT Decision No. 529 (2016), para. 101, quoting *Lamson-Scribner, Jr. v. International Bank for Reconstruction and Development*, WBAT Decision No. 32 (1987), para. 60. Such awards are understood to be '"compensatory and not punitive."' *Id.* In *Alrayes*, the World Bank Administrative Tribunal (WBAT) concluded that the applicant had encountered "unjustifiable delays" in the payment of relocation and pension withdrawal entitlements. *Id.*, para. 100. The WBAT ordered compensation for "unfair treatment" in relation to the delays, in the amount of three months' net salary. Additionally, it awarded the applicant interest on the delayed payments, from the date they were due until they had been paid. (The applicant's claims for the delayed payments themselves had become moot by the time of the WBAT's Decision.) *Id.*, para. 103 and Decision. *See also Lamson-Scribner, Jr.*, Decision (awarding sums improperly denied in relation to various tax allowances, with interest on those sums from date on which payments should have been made to date of actual payment).

286. In *Warren v. Secretary-General of the United Nations*, UNAT/2010/059 (2010), the United Nations Appeals Tribunal (UNAT) considered whether the United Nations Dispute and Appeals Tribunals may order pre-judgment (and post-judgment) interest on monetary relief, and, if so, what interest rates shall apply. The UNAT concluded, notwithstanding the absence of express language in their constitutive statutes, that these tribunals ". . . must have the power to award interest in the normal course of ordering compensation," given that the "*very purpose of compensation is to place the staff member in the same position he or she would have been in had the Organization complied with its contractual obligations*." *Warren*, paras. 10, 14. (Emphasis added.) In *Warren*, the UNAT rejected the Secretary-General's challenge to the United Nations Dispute Tribunal's (UNDT's) award of interest on compensation representing the difference between the sum the UNDT had determined was due as a home leave travel payment and the amount the organization had already paid the applicant. *See also Dia v. Secretary-General of the*

United Nations, Judgment No. 2015-UNAT-553, paras. 28-30 (awarding moral damages of two months' net salary in case of flawed recruitment process, with interest accruing from date applicant was found not suitable for the post).

287. Support for the practice of awarding interest on retroactive payments is also found in the jurisprudence of other international administrative tribunals, which have provided various grounds for such remedy. *See, e.g., P. (Nos. 1, 2 and 3) v. Global Fund to Fight AIDS, Tuberculosis and Malaria*, ILOAT Judgment No. 3613 (2016), para. 52 and Decision (awarding material damages for unlawful termination of employment in amount equivalent to salary, benefits and other emoluments from time of termination until anticipated retirement date, less net earnings from other sources for that same period, together with interest from date of termination of employment until date of payment); *Trambelland*, ILOAT Judgment No. 2076 (2001), Consideration 10 (having agreed to promote the applicant with retroactive effect, the organization must pay him interest on those monthly earnings from their due dates); *Borrello and Chant*, ILOAT Judgment No. 1461 (1995), Consideration 7 (payment of interest on allowance wrongfully denied is required by principle of equal treatment, i.e., to "restore parity between someone who got the allowance at the due date and someone who got it later"); *see also Cruz v. Asian Development Bank*, AsDBAT Decision No. 115 (2018) (reinstatement with back pay including interest).

288. In the view of the Tribunal, the guiding principle in deciding to award interest must be its authority to prescribe measures to "correct the effects" of a rescinded decision. (Article XIV, Section 1.) It may not be appropriate to exercise that authority in every case; however, in the instant case, the Tribunal concludes that the following factors support the award of interest on retroactive payments as part of the remedy. Applicant sought in his Revised Application interest on payments the Fund made to him in 2016 in implementing a retroactive workers' compensation annuity. Additionally, as Applicant has pointed out, the decision-making process that resulted in the decisions rescinded by this Judgment was affected by longstanding uncertainties as to the proper interpretation and application of the Fund's internal law as it relates to disability. These concerns had been brought to light in an earlier Judgment of this Tribunal and by the Fund's Ombudsperson since 2003. *See Ms. "J"*, para. 89. The record of Applicant's case amply demonstrates the '"dispersion of responsibility, [such that] managers and staff may end up dealing with different authorities, with sometimes differing interpretations of the rules and their inter-relationships,"' *Id.* (quoting 2003 Annual Report of the Ombudsperson), when an SRP participant incurs a career-ending disability arising out of Fund employment. Awarding interest on monetary compensation will be especially pertinent when the impugned decision arises in circumstances where there have been "unjustifiable delays," *see Alrayes*, para. 100, on the part of the respondent organization. The Tribunal accordingly concludes that, in restoring retroactively Applicant's rightful entitlements under the Fund's internal law, interest on retroactive payments shall be awarded as part of the measures to "correct the effects" of the decisions the Tribunal rescinds by this Judgment.

289. Having decided that the payment of interest is warranted in this case to "correct the effects" of the rescinded decisions, the question arises of what rate of interest shall be applied. The Tribunal observes that international administrative tribunals have sometimes applied a particular interest rate without explaining its source or the reasons for its application. In other

cases, international administrative tribunals have, by way of explanation, referred to a rate of interest that will '"approximate the return of money invested in the open market."' *See Alrayes*, para. 101 (applying rate of 5% per annum), quoting *Lamson-Scribner, Jr.*, para. 60 (applying rate of 9% per annum). In *Warren*, paras. 16-17, the UNAT noted the lack of a uniform practice in the UNDT and adopted the following approach: "to award interest at the US Prime Rate applicable at the due date of the entitlement . . . , calculated from the due date of the entitlement . . . to the date of payment of the compensation awarded by the UNDT."[46]

290. In identifying an appropriate rate of interest in the circumstances of the instant case, the Tribunal observes that a significant portion of the payments wrongfully denied to Applicant are the early retirement pension payments he was due under the SRP. The Tribunal accordingly concludes that the most appropriate rate of interest to be applied to all of the retroactive payments will be the rate of "regular interest" (SRP Section 1.1(v)) applied by the Plan during the relevant time period, which is the rate of interest to which Applicant's contributions would have been subject had he continued in contributory service.[47]

B. Legal fees and costs

291. As part of the Tribunal's remedial authority, Article XIV, Section 4, of the Statute provides:

> If the Tribunal concludes that an application is well-founded in whole or in part, it may order that the reasonable costs incurred by the applicant in the case, including the cost of applicant's counsel, be totally or partially borne by the Fund, taking into account the nature and complexity of the case, the nature and quality of the work performed, and the amount of the fees in relation to prevailing rates.

292. As noted at para. 1 of this Judgment, Applicant, using the form provided at Annex B of the Tribunal's Rules of Procedure, designated a "duly authorized representative and counsel" to "file/maintain . . . an application with the IMF Administrative Tribunal" and to "sign pleadings, appear before the Tribunal, and take all other necessary action in connection with the pursuance of the case on [his] behalf."[48] In his Revised Application, Applicant stated that he "continues to

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[46] The UNAT additionally decided that post-judgment interest, at a rate 5 percentage points greater than the US Prime Rate, would be imposed in the event that the judgment was not executed within 60 days of its notification to the parties. *Warren*, para. 17.

[47] "Regular interest" is applied in such circumstances as determining "accumulated contributions" (SRP Section 1.1(w)) of an SRP participant, as well as determining the sum that a former SRP participant will be required to pay upon re-joining the Plan pursuant to SRP Section 5.1 (Restoration to Service).

[48] The Form of Appointment was executed on October 1, 2016, and by its terms "shall remain in effect until revoked by [the applicant] and the Tribunal has been so informed in writing." In light of that designation and in the interest

be represented by counsel." Nonetheless, Applicant signed and submitted the Revised Application and Reply himself; each pleading was accompanied by a supporting Letter prepared by the designated counsel. In conjunction with the Letter in support of the Reply, Applicant's counsel attached a Request for legal fees and costs, totaling $26,405.37, for fees invoiced beginning August 2016.[49] On May 3, 2018, following oral proceedings in the case, a Supplementary Request for Costs was submitted, seeking an additional $1,126.13 in legal costs in relation to those proceedings.

293. The Fund has responded to Applicant's requests for legal fees and costs in its Rejoinder and in its further Response of May 11, 2018, raising the following objections. The Fund questions the "nature and quality of the work performed" (Article XIV, Section 4) by Applicant's counsel, asserting that counsel's contributions amounted to a "collection of arguments that were often at odds with Applicant's own claims." Moreover, the Fund asserts that "by requiring the Respondent and the Tribunal to address two separate and often inconsistent pleadings, the submissions of counsel also contravene Rule VII of the Tribunal's Rules of Procedure, which provides that an application 'shall be filed by the Applicant *or* his duly authorized counsel' (emphasis added) – not both." The Fund further submits that if the Tribunal concludes that Applicant has prevailed on some claims and not on others, it should apply a principle of proportionality with respect to any fee award.

294. Counsel for Applicant maintains that Applicant is entitled to full reimbursement of his attorneys' fees and costs. Given the nature of Applicant's permanent and total disability, submits his counsel, Applicant had a "special need for expert help" in pursuing legal remedies.

295. The Tribunal has recently summarized principles guiding its awards of legal fees and costs. *See Ms. "NN"*, paras. 154-156. Among those principles is that a "measure of proportionality" will apply, based on the degree to which an applicant is successful in the context of the totality of the case. Where an applicant has prevailed in part on his claims, the Tribunal will weigh the "relative centrality and complexity" of the various claims and their "ultimate disposition" by the Tribunal. *Mr. "F", Applicant v. International Monetary Fund, Respondent (Assessment of compensable legal costs pursuant to Judgment No. 2005-1)*, IMFAT Order No. 2005-1 (April 18, 2005). In considering the question of proportionality, the Tribunal may also take account of the record assembled by an applicant's counsel in pursuit of unsuccessful claims; where that record is "indispensable to the Tribunal's award to Applicant of substantial relief on other substantial counts," the Tribunal has held that the "Fund should bear the great majority of Applicant's legal costs." *Id. See also Ms. N. Sachdev, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2012-1 (March 6, 2012), para. 260.

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of ensuring the adequate representation of Applicant in the circumstances of the case, the Registrar copied Applicant's counsel on the transmittal of all pleadings in the case from the date of the designation.

[49] The parties do not dispute that Applicant was awarded $36,554.35 in legal fees in November 2015, pursuant to the recommendation of the Grievance Committee. (*See* Grievance Committee's Recommendation with Respect to Grievant's Request for Reimbursement of Attorney Fees, November 13, 2015.)

296. In the instant case, Applicant has prevailed substantially on his claims before the Tribunal. Importantly, he has succeeded on his chief complaint that the SRP Administration Committee erred in retroactively replacing his early retirement pension with a disability pension and deciding to pay him a "coordinated" disability pension and workers' compensation annuity, resulting in payments to Applicant substantially below those to which the Tribunal has determined he is entitled under the Fund's internal law. In addition, Applicant has succeeded on a separate claim that the Fund abused its discretion by requiring him to repay the lump-sum SBF payment, granted pursuant to GAO No. 16 upon his separation for medical reasons. Applicant did not prevail on a series of less substantial challenges, challenges that nonetheless were significantly interwoven with those on which he did prevail, and which arose in the context of a novel and complex case. *See Ms. "J", Applicant v. International Monetary Fund, Respondent (Assessment of compensable legal costs pursuant to Judgment No. 2003-1)*, IMFAT Order No. 2003-1 (December 23, 2003) (no diminution of fee award for consultation on workers' compensation claim not yet ripe for review, given the "intersecting nature" of that claim with applicant's disability pension claim). Applying a principle of proportionality in light of its jurisprudence, the Tribunal concludes that the Fund shall reimburse Applicant in full for the legal fees and costs he incurred in pursuing his case before the Tribunal.

297. The Tribunal has also taken note of the unusual circumstances of Applicant's legal representation and the Fund's argument that the fee award should be denied or diminished on that account. Applicant submitted substantial pleadings on his own, while his counsel supplemented those pleadings with supporting Letters. In the view of the Tribunal, a consideration that weighs in favor of reimbursing fully the legal fees incurred by Applicant is his total and permanent disability and the nature of that disability. In the circumstances, it was essential that Applicant have access to legal representation. The Tribunal is mindful that the ". . . purpose of Article XIV, Section 4, is to provide for cost-shifting in favor of prevailing applicants, thereby increasing access to the Tribunal for aggrieved staff members." *Mr. "V", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 1999-2 (August 13, 1999), para. 138; *Ms. "NN"*, para. 157. Moreover, in the view of the Tribunal, the work of Applicant's counsel contributed to the Tribunal's understanding of the case and to Applicant's success on his principal claims; counsel alone presented Applicant's case in the oral proceedings. In the circumstances, the Tribunal finds no cause to diminish the reimbursement of attorneys' fees on the ground that Applicant also submitted his own pleadings. Nor, in the view of the Tribunal, is the amount of the fees submitted unreasonable or disproportionate to the contribution they provided to the adjudication of the case.

298. Having considered the representations of the parties, and the criteria set out in Article XIV, Section 4, of the Statute, the Tribunal concludes that the Fund shall pay Applicant the total amount of the legal fees and costs he incurred in pursuing his case before the Tribunal, in the sum of $27,531.50.

DECISION

FOR THESE REASONS

The Administrative Tribunal of the International Monetary Fund unanimously decides that:

1. (a) The following decisions of the SRP Administration Committee (taken in 2016 and sustained in its Decision on Review of 2017) are rescinded:

(i) to reverse its 2011 decision denying Mr. "LL" a disability pension, and to grant that disability pension retroactive to and in lieu of the early retirement pension on which Mr. "LL" had retired in 2012; and

(ii) to pay Mr. "LL" a "coordinated" disability pension and workers' compensation annuity, which is (a) capped at the amount payable to him as a workers' compensation annuity, (b) financed in part by the SRP, and (c) reduced by the commutation payment Mr. "LL" had taken on his early retirement pension.

(b) To correct the effects of these rescinded decisions, it is ordered that:

(i) the Fund shall ensure that Mr. "LL" is paid an early retirement pension retroactive to the date of his eligibility for such pension, i.e., February 1, 2012, calculated in accordance with SRP Section 4.2 and reduced by the commutation payment he had taken on his early retirement pension pursuant to SRP Section 15.1(a), and with the benefit of all cost-of-living adjustments pursuant to SRP Section 4.11, with all sums to be paid solely by the SRP Retirement Fund; and

(ii) the Fund shall pay Mr. "LL" a separate workers' compensation annuity retroactive to the date of his separation from the Fund, i.e., February 1, 2012, calculated at 66-2/3 percent of his final pensionable remuneration in accordance with GAO No. 20, Rev. 3, Section 5.01.1, and with the benefit of all cost-of-living adjustments pursuant to GAO No. 20, Rev. 3, Section 7, with all sums to be paid solely by the IMF (i.e., not by the SRP Retirement Fund).

2. (a) The following decision of the Fund is rescinded:

(i) to require Mr. "LL" to repay the lump-sum SBF payment, granted pursuant to GAO No. 16 upon his separation for medical reasons.

(b) To correct the effects of this rescinded decision, it is ordered that:

(i) the Fund shall reimburse Mr. “LL” the sum recovered from him as a consequence of that decision.

3. Within 60 days of its receipt of this Judgment, the Fund shall ensure that Mr. “LL”’s future payments be calculated and paid in accordance with the orders made at paragraph 1(b) above.

4. Within 60 days of its receipt of this Judgment, the Fund shall pay Mr. “LL” all of the retroactive payments due him in accordance with the orders made at paragraphs 1(b) and 2(b) above. In making those retroactive payments, the Fund shall deduct the sums already paid to Mr. “LL” since February 1, 2012, whether as an early retirement pension, a workers’ compensation annuity, or a “coordinated” disability pension and workers’ compensation annuity.

5. The Fund shall pay Mr. “LL” interest on all retroactive payments ordered to be paid in paragraphs 1(b) and 2(b) above (minus the payments already made to him, in accordance with paragraph 4 above), from February 1, 2012, until their payment, at the rate prescribed for “regular interest” (SRP Section 1.1(v)) for the relevant period. The Fund shall provide Mr. “LL” an accounting of these calculations.

6. The following complaints of Mr. “LL” are not sustained: that the Fund wrongfully (i) breached a “duty of care” to take preventative measures to ensure his health and safety; (ii) failed to provide compensation for alleged injury to his spouse; (iii) failed to provide compensation for lost personal effects; (iv) failed to provide him with “special sick leave” for workers’ compensation related absence; (v) failed to compensate him for alleged tax consequences of the Fund’s determination of his disability-related benefits; and (vi) failed to provide compensation for alleged procedural irregularities, delays, and failures to address confusion in the Fund’s laws on disability.

7. The Fund shall also pay Mr. “LL” the total amount of the legal fees and costs he incurred in pursuing his case before the Tribunal, in the sum of $27,531.50.

Catherine M. O'Regan, President

Jan Paulsson, Judge

Edith Brown Weiss, Judge

/s/
Catherine M. O'Regan, President

/s/
Celia Goldman, Registrar

Washington, D.C.
April 5, 2019